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ONTARIO
LEGISLATIVE ASSEMBLY.

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THE PROCEEDINGS OF

THE SELECT COMMITTEE
ON
LABOUR RELATIONS

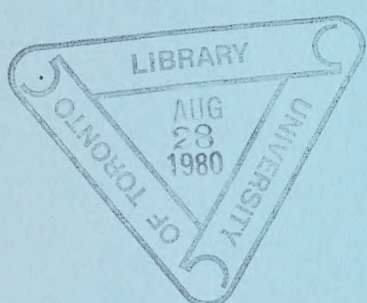
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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON LABOUR RELATIONS

Committee Room No. 2
Parliament Buildings
Queen's Park
Toronto, Ontario

WEDNESDAY,
April 30th, 1958.

MORNING SESSION

JAMES A. MALONEY

Chairman

HAROLD PERKINS

Secretary

GEORGE T. WALSH, Q.C.

Committee Counsel

MEMBERS:

G. E. Jackson
Donald C. MacDonald
Ellis P. Morningstar
Raymond M. Myers
Arthur J. Reaume
H. Leslie Rowntree
George C. Wardrope
Albert Wren
Hon. John Yaremko
Hon. Robert Macaulay

APPEARANCES:

MR. RALPH W. ALLAN
MR. DOUGLAS GRADY
MR. GEORGE McCURDY of the

Windsor and District Labour Council

PRESENTATION:

SUBMISSION OF THE WINDSOR AND DISTRICT LABOUR COUNCIL ON
THE LABOUR RELATIONS ACT.

THE CHAIRMAN: Gentlemen, I see a quoram, and this morning we are to hear a submission from The Windsor and District Labour Council. Who is presenting this Brief, gentlemen? (Following which the three-man delegation introduced themselves.) Now, the system we've been following, gentlemen, is that the Brief is read to us and if the Committee desires to ask you any questions you will answer them to the best of your ability. Will you kindly proceed Mr. Allan?

(MR. ALLAN READ BRIEF WITHOUT INTERPOLATION TO PAGE 7, END OF BRIEF)

THE CHAIRMAN: Thank you very much, Mr. Allan. Now, then, gentlemen, in the usual manner, are there any questions arising out of Page 1 of the Brief? Is there anything on Page 1, gentlemen.

MR. REAUME: Probably under clause 3 I could ask a question. In Windsor, in the event of a strike or a strike in the making, you have now a church group, or a group made up of people from the churches, various groups who sit down and talk it over and try to avoid strikes. Is that group now functioning?

MR. ALLAN: Yes, it is.

MR. REAUME: Is it effective?

MR. ALLAN: It is.

MR. REAUME: Is it good?

MR. ALLAN: Up to the present time it has proved very effective. We feel that it has stopped possibly three strikes in the area up to the present time, and it hasn't been in business very long.

MR. REAUME: It might be a good idea if that were followed in other parts of the Province.

MR. ALLAN: On a voluntary basis, not as a matter of legislation.

MR. REAUME: No, no. I mean on a voluntary basis. I think that anything that anything that you can do to avoid a strike is good,

and if that plan in Windsor is effective then it might be well to give some thought -- I don't mean as a matter of law, but recommend that other places follow this.

MR. ALLAN: If it is done sincerely with the basis of understanding the problems and delving into the problems with an idea of resolving the problems, then the idea is good. If it is going to be used as it was feared, just as a weapon to prolong negotiations, if it is going to be used for that, then it loses its purpose. But, if people go in there with the idea in mind that they are going to resolve the dispute and they are going to bring fresh ideas, then it is a very good idea, because labour does not want disputes carried on for an interminable length of period because that doesn't settle anything.

THE CHAIRMAN: How does this Church Committee work, Mr. Allan?

MR. ALLAN: It is not a Church Committee. It is a group of individuals from the city. There's representatives of labour, management, church groups and civic organizations in the group, and they sit down and discuss the problems

MR. MACDONALD: Do they sit there as individuals or as representatives of specific groups?

MR. ALLAN: The group has no power to take any action or make any recommendations, but the purpose of the group is to bring fresh ideas. In negotiations sometimes you will find that unions and management have become so firmly fixed on one point that they have lost track of other ideas. After you have argued a certain point for a long time you need someone with a fresh idea to come in and open things up again.

MR. REAUME: Yes. But the answer to that one is actually that they come there as representatives of certain groups. . .

MR. MACDONALD: They do sit as individuals, though.

MR. REAUME: . . . and they come as representatives of those certain groups.

MR. MACDONALD: Well, is this a continuing Committee, or is it a sort of an ad hoc one that's reformed each time the occasion requires?

MR. ALLAN: Well, we have two members from each group, and the members alternate from one hearing to another. In other words, one member could sit on a dispute today and there could be another one and another member would be sitting on the other dispute tomorrow. They alternate back and forth.

MR. REAUME: Labour is in favour of it, this present plan?

MR. ALLAN: Yes.

MR. REAUME: I remember quite sometime ago we tried to institute a plan something comparable to what they have in the States, the Toledo Plan, it was known as, and it was something along the order of this; certain representatives of certain groups who met, I think, every month, with the purpose in mind of going over any problems that might exist, the problems that were brewing that concerned management and employees, but at that time, I think maybe this would go back now to around 1944 or 1945 - Labour at that time was violently opposed to that plan. Now, what I am trying to ascertain is why, if they were violently opposed to the plan at that time and now are in favour of it?

MR. ALLAN: Well, I couldn't answer that question probably adequately, but I can give you my own opinion of it. My own opinion is that there are a lot of things that labour might possibly be condemned for in the past, but organized labour, as it is known today, is still growing up. We have a lot of things to learn, and we're learning all the time. We're learning many things, and possibly that is one of the

things that we have learned that it is better to have assistance in resolving disputes than trying to force your way through a brick wall.

MR. REAUME: Mind you, I feel that if this plan that you have now in Windsor is good, I think it is bearing fruit, then certainly one of the jobs here of the Committee is to do everything humanly possible that we can do in order that we might bring about a better feeling throughout the Province between employee and employer and if this plan is good, I don't see anything wrong in advocating it.

MR. ALLAN: Well, we're still in our trial period. We are giving it a try and up until now it has proven itself.

MR. REAUME: But, you say it has worked.

MR. ALLAN: It has worked. For instance, it stopped the S.W. May strike - they had a dead line set, I believe a deadline was set for Midnight and they sat in committee and resolved the dispute. They stopped another strike here not too long ago. And there was one possible strike from a shoe store in the city, that when the shoe store was told that the Union was taking it to this Board, then the shoe store sat down and negotiated instead of just saying -- well, you can go your way and I'll go mine, and if you want to go on strike, go ahead -- but, when they found out that they were going to this Board and public, the opinion then would be focused on the issues at hand, they resolved the dispute and it never did arrive to the Board.

MR. REAUME: That's the big strength in the movement, that is that it solidifies public opinion as to what should be done.

MR. ALLAN: Yes. For a long time Labour was of the idea that any dispute that a union had was strictly between the company and the union involved. . .

MR. REAUME: Well, of course, there is always the people involved, too.

MR. ALLAN: . . . we've learned differently. We've been taught differently through the passage of years.

MR. REAUME: One other question. Do you act in the event of a strike, after a strike occurs?

MR. ALLAN: They will still act. If it is so requested they will act at anytime to stop a dispute before it starts, or to stop it after it starts. They're services are available at all times.

MR. REAUME: I was just wondering if it wouldn't be helpful to ask these boys when they have the opportunity of sending in to our group here the make-up and how this group of yours has functioned and how effective it has been, and just what your functions are in drawing up a report, because it might be somewhat helpful to have this information.

THE CHAIRMAN: Yes. That's the reason I asked which groups were involved in it.

MR. ALLAN: I am not too sure that I have everything left at home or not, but before the group was formed I was in discussion with the Mayor of the city on the group and I received quite a bit of literature from the Mayor, and I'm not too sure whether I have it or not, but in any event the Select Committee would be able to get it from Mike Patrick, it was his idea and it was through his efforts that it became fact, so. . .

MR. REAUME: We could either write to him and ask him for it, or you could get it for us, couldn't you?

MR. ALLAN: He has the whole list of everything.

THE CHAIRMAN: What do you call this Committee, Mr. Allan?

MR. ALLAN: Actually, I don't know whether it has a name or not.

MR. MCCURDY: Yes it has. . . Labour-Management Committee.

THE CHAIRMAN: Labour-Management Committee, of the city and district involved.

MR. REAUME: Well, there isn't anything new, mind you. It's an old idea, but it now appears as though it is functioning.

THE CHAIRMAN: Mr. Perkins, would you be good enough to write to the City Clerk of Windsor and ask him to let us have particulars of the set up of the Labour-Management Committee of Windsor.

MR. REAUME: The beautiful part about it, as I see it, the warring factions are not warring any more, and that's good.

MR. ALLAN: I think the important fact on this is that each group that is represented on this Committee are requested to submit a list of names as recommendations to this committee then the committee itself, when they are adding to the committee will go over the list of names and select people from that. No one actually has the right to appoint anyone to that committee. That is why the committee is functioning the way it is, no one is directly committed to any organization, usually its members are people who are outside the group that they are actually representing, they are not active on the group anymore but primarily they have been active in years past. . . one representative from labour on there now is Jack Reid, and he hasn't been active in labour for quite a few years.

MR. REAUME: The carpenters' union.

MR. ALLAN: It is people like that who are actually retired from active participation. It is a moral affiliation, actually. But they are not active and therefore they are not committed to any certain policy and therefore they are free to speak their own opinions about matters as a result. That's why the committee is working as well as it is.

THE CHAIRMAN: Is there anything else from Page 1, gentlemen?

MR. MYERS: Why shouldn't there be a secret vote

on all applications for certification?

MR. ALLAN: Why should there not be?

MR. MYERS: Yes.

MR. ALLAN: I don't recall the. . .

MR. MYERS: It is not in there, but I was just wondering what were your views on that.

MR. ALLAN: I have no objection to secret votes. I think secret votes are very healthy.

MR. MYERS: The question was. . . on all applications.

MR. ALLAN: Yes, on all applications. But, I do say this on the taking of the secret vote, that if the board is going to say that a secret vote will be taken in any organization, any plant, then, they should make sure that that secret vote is taken for only the people that are in the bargaining unit, because I have personal experience in that matter when a secret vote was taken in the Ford Motor Company of Canada. My foreman voted, the foreman of the department that I worked in voted and not only did the foreman of the department he worked in vote, but his superintendent voted.

THE CHAIRMAN: Mr. Allan, I think you've missed the point of the question. . . under the present regulations certain certifications occur without a vote at all. Now, you were asked if you were in favour of secret votes on all applications for certification.

MR. ALLAN: Oh, not all applications. Only those of cards that are not signed. I mean, if you have a certain percentage of cards signed, then I feel that application should be granted without the necessity of taking a vote, because I fail to see the reasoning for a vote there. If a person signs a card and gives money, then he should be considered as an applicant to that particular union.

THE CHAIRMAN: That is, where there is an application

with a certain large percentage and no intervention by any other group opposing certification, you agree that the certification should be automatic?

MR. ALLAN: Yes.

MR. MYERS: You see, before now organizations have told us that pressure is brought upon employees to sign cards and pay their dollars by unions who were seeking certification, and it seemed to me that the problem could be met by eliminating the requirement of payment of any sum of money at all and then have a secret vote.

MR. ALLAN: Well, that would be perfectly all right if the company would agree to allow the union to devote as much time as they do in the plant. Because at the present time the only thing we can do is go to a person's home, or get him after work, and talk to him to join the union. And all this idea of the companies coming out and saying we go out and bludgeon people and force them into signing is a lot of hog wash, because intimidation today is in the hands of the companies, and I know for sure because I have lost a couple of jobs from trying to organize unions, and it has hurt me personally - it has hurt my wife - she has been fired.

MR. MYERS: Yes. I don't like the idea -- there shouldn't be intimidation and it seems to me that one way of eliminating it would be the secret vote. In fact, the only way.

MR. MCCURDY: Well, sir, if the vote applied to every case and the company was interested in the formation of that union, in other words employed pressure, intimidation, coercion, and so on in that particular unit, how could there be a fair vote?

MR. MYERS: I have seen some circulars that unions have put out that have been very -- very extreme, let us say. I have the feeling that anybody ought to be able to say whatever they like and then it would be a secret vote.

MR. REAUME: Well, I would like to explore that. I've

got an open mind. . . I can remember one instance of a certain plant in Windsor that was organized by the automobile workers and they moved into the quiet little peaceful town of Stratford and they had an agreement, it hadn't expired. The agreement didn't go on, of course, with the plant. An A.F. of L. group came in through the back door while your people weren't there and the first thing that you knew they had the majority of the employees of that company signed up. There was a big do about it. Now, I am just wondering, can there be anything more sacred than the privacy of the ballot box. And all we hear in these Briefs, I've noticed it particularly. And it isn't only true of the union, it is true of the employers as well. They keep using the word "democracy" all the time. Well, now, is there any more effective way of carrying on any kind of a work, whether union or the employer, than by the application of the using of a secret ballot in the ballot boxes. I mean, the employer, for instance, can't stand at the ballot box with a club and makes certain that employee votes as he says, or conversely either. And I'm just wondering if we wouldn't do away with a lot -- you find it, in organizing certain places, that some people will sign both cards; they will sign the card for one union and then again will sign one for a different union, and in that instance they have signed two. Now, would not the application, and this is the question -- would not the application of the secret ballot do away with all of that?

MR. ALLAN: It is quite possible the plan might have some merit, but the only thing that I am thinking about is the intimidation and the coercion that is formed by a thinly veiled threat. Now, we've had, I've had it, many times -- they don't just come right out and say that if the union gets in you're fired -- they'll come up and tell you -- I don't know, but if that union gets in, we're going to have a pretty tough time keeping everybody here.

MR. MYERS: Well, that may be the truth. And why

shouldn't they say it. What difference would it make if there's a secret vote?

MR. ALLAN: There's a faint possibility that it may be the truth, but if it had been the truth they would have laid-off the man entirely through the union trying to get in, because no employer is going to keep on a group of men simply for the sole purpose of being able to say -- once the union gets in here, you're out. The men are in that plant to perform certain operations and to do certain work and if the employer hasn't got that work for him they shouldn't be in the factory.

MR. REAUME: No, but if we are going to institute a secret ballot affair, then we are going to take steps, I would think, to make certain that there is no discrimination or incrimination on the part of either the employee or the employer. But, the basic question is -- do you feel that the application of a secret ballot is good or bad? Generally it's good.

MR. MACDONALD: Well, Mr. Chairman, may I ask Mr. Reaume a question. Are you making this plea with regard to all cases or just those in which this is not required under the Act?

MR. REAUME: All cases. I am asking Labour if they feel it would be a good thing. Now, we have always advocated in our system of things that the application of the secret ballot is good, why isn't it good in this instance?

MR. MCCURDY: Well, Mr. Reaume. I would like to ask this question. Say that you would write into the Act and safeguard it so there would be no misapplication. . . have you any idea what those safeguards would be? Could you give us any definite examples of the type the safeguards would be that would guarantee a man that there would be no discrimination against him for voting for the union.

MR. REAUME: Well, of course, answering that question

in a broad way -- I mean that we will have to give it some thought, but I come from a town probably that might be termed the capital seat of the working people of Canada, and I remember quite well back in about 1940 at the time of the organization of the Ford Plant which probably is the biggest job that has ever been done -- there were at that time -- management were holding dances, free beer, hot dogs. . .

THE CHAIRMAN: Not in Windsor, surely.

MR. MACDONALD: The Conservatives do that in my area in election time.

MR. REAUME: I was just going to say that we could put safeguards in the Act to avoid all that.

THE CHAIRMAN: Don't you find, Mr. Allan, that the situation that you refer to -- now, there's a new view taken by both management and the public at large in that the trade union movement is recognized as being with us and whether management likes it or not it is going to be with us.

MR. ALLAN: They still fight us, though.

THE CHAIRMAN: Well, some of management, but not to the same degree as existed. . .

MR. ALLAN: No. It's more subtle now.

THE CHAIRMAN: Well, you're proceeding on the assumption that management is, in each instance, is going to be opposed to labour. I don't agree with that.

MR. ALLAN: Well, my experience has been that management will continue to fight and attempt to destroy unions by all means. I have experienced that in my life. I've been in the labour movement. . .

THE CHAIRMAN: They are not destroying too many of them, are they?

MR. ALLAN: No, because today -- they could have

destroyed us thirty years ago had they used the same tactics.

THE CHAIRMAN: There was no Labour Relations Act thirty years ago.

MR. ALLAN: No. But today we have learned -- or we have been taught, rather, by them how to fight back. So we fight back now.

THE CHAIRMAN: There was no Labour Relations Act, and if we were to follow all the recommendations that you make in this Brief I don't think we'd have any Labour Relations Act left.

MR. ALLAN: You'd have a good one. You'd have one that could be worked.

THE CHAIRMAN: You want everything deleted from it.

MR. ALLAN: Well, if you read your Labour Legislation Act as it stands today and as it is applied you will admit that you haven't got a working one now, otherwise this Select Committee would not be formed.

THE CHAIRMAN: We admit that certain changes must be made, but we certainly don't admit that everything should be deleted as you advocate.

MR. REAUME: Going back again for a moment to the application of the secret ballot, I don't think this question has been answered yet. Assuming that we do everything within our power to protect the rights of both parties, the question is is Labour in favour of the application of the ballot in every case?

MR. ALLAN: Not in every case, but we certainly do not have any objection to the ballot box. None whatsoever. But, the union must --- you cannot avoid the procedure of contacting the employee to get the signed application to determine whether there will be a vote or whether there will not. The minimum is fifty-five per cent for automatic certification, but you still must go to the employee and contact him and you have the required percentage, that is, above fifty-five percent, why then should you,

then, use in all these cases the ballot box.

THE CHAIRMAN: Do you admit that that section is good, requiring fifty-five per cent?

MR. ALLAN: Not completely, no.

MR. MYERS: Why not reduce the fifty-five per cent to ten per cent, or some very small percentage?

MR. ALLAN: I disagree with ten per cent.

MR. MYERS: Why not?

MR. ALLAN: I should say that I do not completely disagree with fifty-five per cent, but there are some objections which I do have to where --- we have one particular case of the company interfering in the formation of the unit and where the legislation does say that we must have fifty per cent if we establish before the Board that there are unfair practices or interference by the company, then we must have fifty per cent to have automatic certification. But whether it's fifty per cent or twenty-five per cent, I have the feeling that it should be automatic certification.

MR. MYERS: The thing that worries me is that you get names which represent fifty per cent or fifty-five percent in favour of a union and they really don't. That is the problem that I want to overcome if I can. While fifty-five per cent may have signed cards, still that isn't their belief -- they signed them because of pressures of various sorts.

MR. ALLAN: And they signed intervention cards supplied by the companies for the very same reason.

THE CHAIRMAN: Two wrongs don't make a right.

MR. ALLAN: That's true, but here is a case that I think everyone is forgetting in this discussion. If you have a construction industry that, we'll say, has twelve bricklayers and twelve carpenters and the union goes in and successfully signs, without coercion, I am not talking about coercion, successfully signs seven of each or eight of each, we'll just say

eight of each -- that's all they want -- they don't try for the other four because they figure it will be automatic after fifty-five per cent. So they get eight of each. Then they apply for certification. Immediately they apply for certification the companies go ahead and say -- we're going to just go a little faster, -- we need five more of each. And then they write to the Board and say -- look, they haven't got fifty-five per cent, they haven't even got fifty per cent, and yet upon application they have. Now what are you going to do in a case like that?

MR. MYERS: Well, that could be fixed by setting in the Act that the number would be gauged by the number of that particular craft that was in the employ of the company at the time certification was applied for.

MR. ALLAN: Then if there are eight to sign, I say there would be no reason for having any vote if there was any dispute. I'm saying there is no dispute.

MR. MYERS: And, then, supposing you had certification -- if the employer agreed without a vote, and in every other case it's a vote.

MR. ALLAN: The employer or the employee?

MR. MYERS: The employer.

MR. ALLAN: The employer -- if the employer agrees and he sees that the vote is going against him -- if he is honest and agrees, then I see no reason for a vote either.

MR. REAUME: Well, that's the whole trouble -- if he's honest, but both sides say that the other person isn't honest, and everybody is trying to prove that one side is dishonest, but then if you have a vote then that proves it.

THE CHAIRMAN: No, but where you have an application for certification and you have the required number of cards and there's no

intervention, then I don't see the necessity for it.

MR. ALLAN: There would be no necessity for a vote.

MR. MACDONALD: Well, quite in addition to that, you will recall when we discussed this quite some months ago with Professor Finkelman, he pointed out that administratively you'd just be creating a fantastic load that would achieve very little purpose to just sort of underline what has already been decided.

THE CHAIRMAN: Unless you wanted to say that in the case of intervention by a company that the company must bear half the cost of the vote.

MR. MACDONALD: That would be all right.

THE CHAIRMAN: But, where there is an application and the required number of cards is produced the Act right now gives automatic certification. I can't see where there is any justification for saying that there has been brow-beating or anything else by the members of the organizing union trying to force these men to sign cards. You are assuming that these men are not carrying on their business properly. I don't think that.

MR. MYERS: Well, why not a provision that the employer can have a vote if he pays for the cost? If he thinks there have been pressures and many of them do.

THE CHAIRMAN: No employer has made any such suggestion as that to this Committee that I know of. Why should we have to borrow trouble in these things. Good God, we've got enough trouble now.

MR. GRADY: The employer may, at the original hearing for the application, the certification application, if he feels that the union, the organizing union has organized unfairly, then he may present his case at that time. Why should there always be a vote in that case. I mean he should establish that the union is not organizing properly.

MR. MYERS: Because he has the same difficulties that

you would have in proving intimidation. There isn't any way that you can prove because the man isn't going to squeal on the fellows that work on the next machine. The position in the plant would be untenable.

MR. MACDONALD: Mr. Chairman, I think there is one point here, and forgive me for repeating it, surely the democratic process isn't perfect, but why should one seek to completely revise the democratic process in the particular sphere of Labour because it's imperfect when you ignore suggestions for its revision in elections, general elections.

MR. MYERS: We're just extending it to Labour, not curtailing it.

THE CHAIRMAN: Anything else on Page 1, gentlemen? Page two, Section 1 (b). Is there anything arises? Section 1, sub-section three.

MR. MACDONALD: Well, this is getting back to something we've heard many times before, but I suspect our friends today are aware of the contention that it must be the right of Management, otherwise management is being sort of freed of democratic procedures and democratic rights to bring in other people to form the working force. Now, presumably you're . . .

MR. ALLAN: Well, we're not attempting to deny the right of management to bring in, to increase their working force, but when an application is filed for certification and then the management, for some unknown reason finds out the need to increase their work force without an additional need for production, then the purpose is very clear. In other words, if he has gone along for ten years with a hundred men doing the same work day in and day out with never a let up -- oh, possibly a lay-off, but nothing to speak of -- and then all of a sudden the union says we have seventy-five per cent of those men who want to belong to the union, or fifty-five per cent -- all he needs to do is to bring in two men and force a

vote.

MR. MYERS: Has this happened?

MR. ALLAN: Yes. We can prove it.

THE CHAIRMAN: I think, Mr. Allan, you're not discussing the topic that we were referring to.

MR. ALLAN: Which one are you talking to?

THE CHAIRMAN: Section 1, sub-section 3. That is, bringing on the scabs to break a strike. Not certification.

MR. ALLAN: Oh, pardon me.

THE CHAIRMAN: We're through with certification

MR. ALLAN: In that section I am talking about when a place goes on strike and the company keeps the plant open, we don't believe that--we believe that a majority of any organization say that strike action should, then that action should be. In other words, it's the same as your government -- if the Conservatives say this is what we're going to pass and the Liberals and C.C.F. say --no, it is not what you are going to pass, we're in opposition. . .

MR. WREN: They pass it anyway.

MR. ALLAN: They pass it anyway. . . So, I can signify for strike, and once the plant is struck by a majority vote then the company is not entitled to hire a single solitary soul to run that plant and to exploit labour, to steal a man's job who is out trying to fight to get a decent living.

THE CHAIRMAN: That is, in effect, what you are saying that by so doing they are destroying the economic weapon that they have by giving them the right to strike where there is a legal strike.

MR. ALLAN: I wouldn't say it's an economic weapon. I would say that to strike are the rights of the workingman, but by so doing they are destroying the economy of the Province.

THE CHAIRMAN: This submission has been made to us by

several other bodies. Section 3, Page 2. That has to do with Section 78. This, also, has been recommended to us by a great number of people. Section 7. . .

MR. REAUME: Let's not skip that Section 3 for a minute. I'm assuming that you mean in there that this would be applicable, also, to employees of governments of all description, not only local but province-wide?

MR. ALLAN: Well, it is our opinion that anybody who wants to join a union can. I mean, even Members of Parliament are entitled to have a union to bargain on their behalf.

MR. REAUME: Now you've got something!

MR. MACAULAY: If I may be pardoned an observation, my recollection is that when the A.F. of L. in the States, when the organizers of that union tried to form their own bargaining unit their leading men were discharged.

MR. ALLAN: That maybe was possible.

MR. MACAULAY: And they applied to the National Labour Relations Board for certification, well, I think that the analogy is pretty sweeping because right within the labour movement, when their own their own men tried to organize. . .

MR. ALLAN: Well, I think that was only a small branch of it.

MR. MCCURDY: Well, while this may have happened in the United States, in Canada, in Ontario in particular, we do have an association which is formed of business agents and people who operate on the road, and they have full bargaining rights.

MR. REAUME: Within the union.

MR. MCCURDY: Yes. But their bargaining rights are never restricted by the union because of the fact that most union people who

are active recognize that if they are going to do a good job they have to protect themselves for effective legislation they are trying to obtain for the people they are working for. That's why you don't see many organizations, but we do have it in Ontario here.

MR. MACAULAY: There is one important aspect of this that I think has been forgotten. We quote the happenings in the United States -- each man, when he becomes a representative of an organization in Labour is a member of the union and in a lot of unions, quite a lot of them -- in the U.A.W., for instance, you cannot belong to two unions in the same jurisdiction. . .

MR. ALLAN: Don't they belong to a bargaining unit within those unions?

MR. MACAULAY: We have a bargaining unit within a union, yes, but if I became an international representative of the United Automobile Workers that would mean I would come under the jurisdiction of the United Automobile Workers, so therefore if I attempted to get for my union outside the contract of the United Automobile workers for my own protection, which I have to belong to a union, then I am in contravention of our own constitution and subject to discharge, then that is what happened to some of those over there.

MR. ALLAN: They were trying to organize bargaining units. However, it doesn't apply here anyhow.

THE CHAIRMAN: Section 7, Sub-sections 2, 3 and 4.

MR. MACDONALD: Mr. Chairman, on Section 7, there has been a further rider attached to the proposal you have here, namely, that fifty per cent of the eligible voters should have voted. Do you object to that? In other words, it would be automatic if fifty per cent have voted, assuming that those voting represent fifty per cent of the eligible voters.

MR. ALLAN: You are still saying then that those who

abstain from voting. . .

MR. MACDONALD: No, no.

THE CHAIRMAN: No, no.

MR. ALLAN: Did you say fifty per cent of those voting?

Or those eligible to vote?

THE CHAIRMAN: No. Those voting.

MR. ALLAN: Well, that's exactly what this. . .

THE CHAIRMAN: Supposing you have this situation, though, Mr. Allan, where you have a plant of a hundred men belonging to the union and only ten of those men vote and seven of them vote yes. . . would you still say that would be a representative vote of the men in that plant?

MR. ALLAN: It would be a representative vote of the people who are interested in having a union.

THE CHAIRMAN: Of the people who voted.

MR. ALLAN: The other ones there don't care whether there's a union or not otherwise they would vote.

MR. MACDONALD: No, but I think you've missed, Mr. Allan, the point I am making. I suspect you're not in disagreement and I just wanted to get your view on the thing. You say here that if in the taking of a representative vote more than fifty per cent of those casting their ballots cast it in favour of signing. . . now, do you object to the rider that this will become effective only on condition that at least fifty per cent of the eligible voters exercise their franchise, so that you will feel sure that you have got a representative vote.

MR. ALLAN: Well, that means that twenty-five per cent of those people. . .

MR. MACDONALD: Well, theoretically, it could come down to less.

MR. ALLAN: Wouldn't that have to be based on the

idea that every attempt would be made to see that the people were conscious of their right to vote.

MR. MACDONALD: Or at least fifty per cent of them.

MR. ALLAN: Yes. How many votes have been taken that you can recall, or anyone can recall, that have had less than fifty per cent of those eligible.

MR. MACDONALD: I think your point is very well taken except that the objection that is made is the objection that was put in, to make his point, a somewhat exaggerated form by the Chairman, that a hundred did. . . but, surely, you can protect yourself against that objection by saying fifty per cent of those eligible should vote, but if that is the case, then if fifty per cent of those voting vote in favour, it's automatic.

MR. ALLAN: Off hand I would have no objection to that, because I know of no case where less than fifty per cent have voted.

THE CHAIRMAN: I agree with that, but it could happen.

MR. MACDONALD: Is this a group that has been enacted.

THE CHAIRMAN: No, no. But, these are in line with submissions that have been made.

MR. MACDONALD: This is a situation that has been recognized by the Saskatchewan Labour Relations Act for years.

MR. MYERS: What percentage of the people do go out and vote ?

MR. ALLAN: I think, from my knowledge, that it has been about fifty to sixty per cent of the seventy from one plant or another; it generally goes around eighty per cent of those eligible.

MR. MYERS: About eighty per cent.

MR. ALLAN: Yes. And the remaining twenty per cent --- you see, the union then has to -- in some cases it may be only five

or six people, which may constitute one per cent. But, nevertheless, the union is put at a disadvantage because they have to increase their vote to cover the people who don't vote.

MR. MYERS: But it has been your experience where votes have been between seventy and eighty per cent that seventy to eighty per cent of the employees do turn out to vote.

MR. ALLAN: Yes. And that's a minimum.

MR. MYERS: And even more than that.

MR. ALLAN: Yes.

THE CHAIRMAN: But if we were to eliminate that feature which says that the vote is to be decided on fifty per cent of those eligible to vote and those who don't vote are counted as No's --- if that was eliminated --- that's what you want?

MR. ALLAN: That's what we want. We don't want to have to increase our vote to cover a No vote that isn't even registered.

THE CHAIRMAN: Section 9. . . We've had this presentation made to us before. Section 11. . .

MR. ALLAN: I would just point out. . . in Section 11 the argument is, who is supposed to determine who is bargaining in good faith?

THE CHAIRMAN: Well, how are you going to tell?

MR. ALLAN: That's what I say. I was going to point out an example of the eighteen months the Ford Motor Company of Canada, on this very same question when for months we met with the company and the company reiterated their same position, and we accused them of not bargaining in good faith, then they say -- we are, we're meeting with you every day ---every day that you want we meet with you -- and eighteen months went by and we didn't have a contract, and it was getting pretty hot in the plant and there were several incidents in the plant simply because we had gone

eighteen months without anything.

THE CHAIRMAN: Did you ask leave to prosecute?

MR. ALLAN: On what grounds?

THE CHAIRMAN: Well, that they weren't bargaining in good faith.

MR. ALLAN: How could we prove it? There is no use of the union using the Board's time and our time when we know we couldn't prove it. All they have to say is -- sure, we are bargaining in good faith -- we're talking to you.

MR. MYERS: What would your reaction be to having in our Act something comparable to the American where you can go to your Board and present your case and if you convince them then they can issue a cease and desist order, or direct that they must bargain?

MR. ALLAN: Except for one thing -- that Act is not applied in the United States either and I refer you to the Fuller strike which has been in existence for quite a number of years -- the National Labour Relations Board in the United States has told them to get in and bargain and they just sat back and thumbed their nose at them and said -- we'll do what we want and you do what you want -- and so the strike is still in existence. It is pretty hard to force anybody to bargain in good faith. As long as they open up their mouths and words come out, they are bargaining in good faith. They claim they are trying to resolve a dispute. So, who can then determine whether they're honest or not?

THE CHAIRMAN: Page 3, Section 12. . .

MR. ALLAN: This one, I think, is self-explanatory. I think you have had it before. It is just the case of a small union where you only have twelve or fifteen or twenty-five people and there maybe no one in there capable of going up against a company lawyer, and here they would just be beaten underneath the table before they even got their mouth open.

MR. REAUME: Or a small craft local like the printing trade where you've got three and anyone of them sticks his neck out and have it chopped off lower than the shoulders.

THE CHAIRMAN: Section 13, Sub-section 1. . .

MR. ALLAN: Well, this 15 days is for one purpose that we have gone into various companies and issued our presentations to the company, our initial demands, and the company just reads them and laughs and say -- you can't go bringing that ridiculous thing -- we'd never agree to a thing like that --- and when we bring back solid proposals they still say that and they haven't done anything themselves to try to resolve the dispute, so we say that if they aren't going to give us a solid proposal or show any indication that the dispute can be resolved by amicable negotiations, then in fifteen days we'll know. We can apply for conciliation if we feel, if either party feels -- we don't say that it should be mandatory after fifteen days, but if either party feels that the other person is stalling, then we say that we should be allowed to apply for conciliation or for a Conciliation Officer and that officer comes at the request of either party.

THE CHAIRMAN: That is if you feel that there is no longer any use in prolonging negotiations.

MR. ALLAN: In a fifteen day period, yes.

THE CHAIRMAN: Do you think fifteen days is quite long enough?

MR. ALLAN: Yes, I do. We have been told in the first stage -- you might as well go out and forget about this -- there is no use coming in to us with these.

THE CHAIRMAN: They're obviously going to conciliation anyway.

MR. ALLAN: That's their way, just to prolong things -- they'll come in and meet with you every day until the period of time has

elapsed and then you have to go to conciliation. And, then, they'll not only do that, but they will say to you -- get the Conciliation Officer in here. They will stall as long as they possibly can on that, and they are perfectly happy to have that report come in far over the time that is allowed for it, and then they will say -- we can't do anything for you yet, we'll have to have a Conciliation Board -- and the first thing you know we've gone from January -- well, the U.A.W. presented a list of the lengths of time in their Brief on how many days it took.

THE CHAIRMAN: This has been presented to us before and I think something is going to be done about that.

Section 14, Sub-section 2. . . any questions, gentlemen?
Sub-section 3. . . ?

In 14 (2) what you are actually doing is advocating the elimination of Conciliation Boards. If the Conciliation Officer can't settle it after a certain period of time has elapsed then you would have the right to strike.

MR. ALLAN: Yes, sir.

THE CHAIRMAN: Section 14 (3). . . ? Sections 15 to 29 inclusive. . . ?

MR. MACDONALD: How would you decide whether or not a person is qualified?

MR. ALLAN: Well, I was going to have to refer you then to the experience of the U.A.W. in the United States. They have had the same trouble as we have had over here with people who have never been directly, you know -- in direct contact with the various problems, so a school was set up in one of the universities -- off hand I couldn't tell you, although the information could be obtained -- and people were given education in business administration, labour views and a history of Labour-Management relations. . .

MR. MACDONALD: Well, your second paragraph there. . .

you say -- "We do not believe that Judges or Lawyers should be nominees on any Committee under the Act unless qualified in the field of Labour Management. . . ." In other words, you mean that they must have had some experience.

MR. ALLAN: Knowledge. . . not necessarily some experience. Some knowledge. . . I've had experience in this, I've been sitting on these boards for years. . . but they haven't the knowledge of what is going on in that plant. . . of the cause. . . of the effect. . . of the Grievance. Now, a Judge did tell me one day when the company tried to point out that my work record was not of the best, the judge did try to point out to me one day --- well, if your work record is not of the best --- this was at a time when I had some fifty Grievances lodged in and the company tried to prove that because I had fifty Grievances lodged in because I was a steward that I wasn't a good worker, because I was lodging those Grievances on behalf of other employees --- now the judge did agree with the company that because I had lodged those Grievances on behalf of the employees that my work record couldn't be very good because I was giving too many complaints. Now, is that a knowledge of the workman? I was acting on behalf of the men which was my job, which was the job they elected me to do -- so that should have no bearing on my work. And, when it finally boiled down in the discussion, and when the company man was put on the stand he had to admit that the actual work that I did was of the best. Now, that is what I am getting at, they don't know what exactly is going on inside the plant and they are more inclined to listen to people who have gone to school with them or played golf with. . .

THE CHAIRMAN: Or are in a different social strata.

MR. ALLAN: Well, I wouldn't say they are in a different social strata. . .

MR. MYERS: Well, that's been suggested to you.

MR. ALLAN: Well, that may be perfectly true, but I am not inclined to agree with that, but I will say this, that when I have been the union nominee on certain Board and a judge. . . I am not trying to intimate that he is corrupt or anything like this, but the lawyers that he sided with all they could discuss was -- well, I was in the Class of '28 what class -- oh, Joe Doe was in that. . . not one single solitary thing about what was in dispute except -- yes, sir, I remember that. . . remember the time you did this. . . and, I mean, we're trying to resolve a dispute, and they don't know the first thing about the dispute.

MR. REAUME: Earlier this morning, though, you indicated in your evidence that you were impressed with the success that has taken place in Windsor by some fresh viewpoints coming into labour relations.

MR. MCCURDY: In ninety per cent of the cases actually it is always the practice that the company appointee takes the position of the company and the union appointee takes the position of the union, if the people were trained in the field it wouldn't matter if they were the same strata, instead of trying to resolve the matter on a judicial basis. . .

THE CHAIRMAN: That recommendation has been made to us in several other Briefs, gentlemen.

MR. REAUME: Well, on that one point, though, I can agree that judges particularly ought to be excluded from that type of work for the very simple reason that they have got other work to do and I would think that the other work is suffering when they have to go out and do this type of work, but a lawyer. . . now, he comes from a somewhat different field. . . and we have one here, as you know, on the Committee. . . but if a company are going to have Boards, and they want to pick a lawyer--- I wanted to say that if the union has the right to appoint a person of their choice, whether he be a carpenter, a bricklayer or automobile workers, then why wouldn't the company have the right, if they wished, to appoint a

lawyer.

MR. ALLAN: Well, what I am getting at is I am suggesting that we do away with lawyers and that the Select Committee form what we could call a Board of Arbitration of trained people. . .

MR. MACDONALD: You mean a panel.

MR. ALLAN: A panel, yes. I don't know how many people would be on it, that would be a subject for discussion, but they would be people who are educated in that field. They would be given a sort of refresher course. . .

MR. YAREMKO: How many men would sit at a time. . . one?

MR. ALLAN: One for each case.

MR. YAREMKO: Yes, that is my view of the matter.

MR. REAUME: But, supposing that that trained person that you are speaking of happened to be a lawyer?

MR. ALLAN: He could be the premier of the province - we don't care as long as he is versed in Labour-Management disputes and he knows what he is going to arbitrate.

MR. MACDONALD: The attitude that is being presented here is not only derived from certain lawyers and in cases judges who don't know anything about the law, but the attitude of these people. I mean the U.A.W. on one occasion had a case of the judge sending them home because the boys came directly from the job in overalls. . .

THE CHAIRMAN: Some lawyers have been sent home by judges because they weren't properly dressed. Well, this presentation has been made to us before, gentlemen. . . Page 4, gentlemen. . . dealing with the fourth paragraph on that page, Mr. Allan, having to do with employers obtaining injunctions without notice to the employees. . . Paragraph 4. . . "Before an employer obtains an injunction against a union, and so forth. . . permission should first be granted by the Labour Relations Board. . . "have

you ever considered this possibility that if there was no such thing as an ex parte injunction -- if that was eliminated and the union involved was given forty-eight hours notice of the application so that they could file affidavit material and the papers be served on them, would that serve your. . .

MR. ALLAN: If we had a chance to give rebuttal before any injunction was served. . .

THE CHAIRMAN: Well, as you know, now ex parte proceedings involve only the application for an injunction which is granted on affidavit evidence. If the papers were served on your union. . .

MR. ALLAN: That's by the company?

THE CHAIRMAN: Yes. . . and given on forty-eight hours notice, so that you were given a chance to answer that affidavit evidence by further affidavits, would that satisfy you?

MR. ALLAN: You would find that there would be very few injunctions served against the unions.

THE CHAIRMAN: Well, I'm not going into that. Would that satisfy your objections on this point?

MR. ALLAN: We don't say injunctions should be eliminated. . . no.

THE CHAIRMAN: Would you answer the question?

MR. ALLAN: Do you want a direct answer. . . as far as I know it would be my personal opinion. . .

THE CHAIRMAN: That's all right.

MR. ALLAN: As far as I know, and you know, I can't discuss it with anyone. . . as far as I'm concerned. . . yes. Certainly. We want a chance to tell the companies exactly what we think of their allegations and suppositions in front of the judicial body, when they go up and tell -- we're liable to do this and we're liable to do that and we want an injunction against them to stop them from doing it.

THE CHAIRMAN: You see, now, the procedure is, in all matters having to do with injunctions and the ex parte application is made, then an injunction order is granted, if the judge feels that it should be on the material before him, for what they call an interim period of eight days, and at the end of that time you've got to appear before. . .

MR. MACDONALD: It gives you time to prepare your case.

THE CHAIRMAN: Yes.

MR. ALLAN: They serve us with such a period of time that half the time the unions can't prepare their case to go into court, so they have to ask for an extension.

THE CHAIRMAN: But, if you were served with the original documents, that is, that there would no longer be such a thing as an ex parte injunction insofar as labour matters are concerned. . .

MR. ALLAN: I think that would serve our purpose.

THE CHAIRMAN: Section 31. . .

MR. ALLAN: In the last two paragraphs of that page I should like to explain exactly what is meant by this. To some people it might sound a little ridiculous because we have a Labour Inspector who reports these events -- now, in one construction industry pictures were taken of one building that was being built of scaffolding that was set up on, I think it was cement blocks, and the men were forced to work on that. The reason they were forced to work on that was because it was cheaper just to raise them up that little distance and make the men stretch rather than put the proper thing up. . . pictures were taken of it. . . but by the time we could get the inspector up to that job to show him exactly what was done and what the employer was forcing the men to doing, the job was completed. It was completed in two days.

MR. REAUME: Where was that, in Hamilton?

MR. ALLAN: In Windsor. So, if, on the basis of this,

-- on the basis of this we have no recourse to anything. That guy could have fallen off that scaffold and killed himself, and yet, who would be to blame?

MR. REAUME: Why couldn't you still lay a charge?

MR. ALLAN: We could lay a charge after it's been done.

THE CHAIRMAN: Did you present the pictures to anybody?

MR. ALLAN: I think the inspector still has them.

MR. MCCURDY: Well, I can tell you of a case where there actually was a job where a man was killed. . .

MR. REAUME: Where was it at?

MR. MCCURDY: It was at that church. . . at Tecumseh Road there. . .

MR. REAUME: The Orthodox Church?

MR. MCCURDY: Yes. On Tecumseh East. . . and a scaffold was set up. . . part of this scaffold should have been dug down and levelled off. . . the scaffold was approximately one hundred and twenty feet high. . . the man was up there with no guard rail on it and the scaffold was wobbling all over everywhere because of a high wind, and the man was ---he wasn't forced up there, but if he had known his rights under his contract possibly he would have refused, but with working for a small company like that if you refuse to perform a job you are ordered to do you don't last very long, especially under our unit Building Trades. . . they can get rid of one man one day and hire another man the next because it's impossible for us to enforce seniority. This man was actually put on it. . . and you say, why didn't we prosecute. . . we did. We actually took pictures before the inspector got out there. . . the inspector went out but by the time the inspector got out and took pictures for himself, the pictures showed a guard rail and the scaffold was set down properly. . .

MR. WREN: But, you had enough witnesses previously.

MR. MCCURDY: Yes, but I'll explain why we couldn't

prosecute. We had witnesses, we had pictures to prove there was negligence on the part of the contractor that the scaffold was set up as it was, and yet we went to the Compensation Board and he wanted us to prosecute. The Compensation Board told us that we could prosecute but before we could prosecute we'd have to waive any rights of the widow in the case to come back on the Compensation Board if we lost the case. . . This was a very small company. That company could have gone broke within a year. We don't know how well he would make out financially. . . you see, although the company was negligent or even if we had the evidence to prove it. . .

THE CHAIRMAN: Who told you that in the Workmen's Compensation Board? Anybody who would tell you that wasn't talking sense. If the prosecution failed that the widow wouldn't be entitled to the pension and the man being killed in the course of his employment? That's a nonsensical answer, if that's what he gave you.

MR. MCCURDY: We have a case like that in Dresden right now.

MR. MACAULAY: The Act so provides, doesn't it? I think the Workmen's Compensation Act sets it out in those terms.

MR. ALLAN: That's right, if you take it into the courts and lose. . .

THE CHAIRMAN: That's a civil action. Was there an inquest into this man's death.

MR. MCCURDY: There was an inquest.

THE CHAIRMAN: What was the finding of the inquest?

MR. MCCURDY: The inquest found that the company was negligent. The Compensation Board did, too. But, in order for us to sue. . . then we would have had to. . .

THE CHAIRMAN: You wouldn't have had any right to sue. The workman's rights of action, or the widow's are taken away under the Workmen's Compensation Act. But, I understood you to say that you wanted to apply for the right to prosecute the employer. Any prosecution, no matter what its outcome, would not result in the widow losing her right to a pension. Her right of action under the Workmen's Compensation Act would be taken away against the employer, even in the event of negligence. You'd have no right to sue. You've got to go under the Act

MR. MCCURDY: The only information that we have is that she must give up her rights. . .

MR. MYERS: But, there wasn't any rights, there was nobody hurt was there at this stage?

MR. MCCURDY: A man was killed.

MR. REAUME: A man was killed. But when the union found out that this scaffold was not safe, why didn't you walk off the job?

MR. MCCURDY: He was the only man working on the job.

MR. REAUME: Well, even so.

MR. ALLAN: Because it would have been written up in the little black book -- another illegal strike and used against the unions, regardless of the circumstances. As we have found out in many, many cases, where we have said to the company -- this is going to stop immediately and the man is not going to work on it anymore. . .

MR. REAUME: Ralph, I have seen strikes occur with less important things happening than that.

MR. ALLAN: Yes, but not lately.

MR. REAUME: Well, not lately, maybe.

MR. ALLAN: A man is worried about his job. It is the only thing he has got to live on, and he has got to protect that and sometimes some men, in order to make sure that they are going to protect their jobs, lean over backwards and take a lot of dirt and a lot of crap in order to maintain their job.

MR. REAUME: Well, certainly taking a lot of crap, as you have explained, is one thing, but when you have to work under constant fear of falling off and breaking your back, well that's something else again, and I suppose the union didn't advise the man. . .

THE CHAIRMAN: I suppose the union didn't know anything about this situation until the man was killed.

MR. ALLAN: We are not conversant with all these procedures that we can get under the law and we cannot afford to maintain counsel for small unions.

MR. REAUME: No, but you can take pictures of the job.

MR. MCCURDY: Immediately after the death we had. . .

MR. REAUME: After the death.

THE CHAIRMAN: I suppose you didn't even know the man was there until you found out he'd been killed.

MR. MCCURDY: We got the report immediately after he fell.

MR. REAUME: Well, when did you actually take pictures?

THE CHAIRMAN: After the man was killed.

MR. MCCURDY: That was the only time we knew about it.

THE CHAIRMAN: Oh, I can understand that.

MR. ALLAN: If you had two men working on a building on the other side of town, ten miles apart, it's pretty rough to police that job.

THE CHAIRMAN: Gentlemen, shall we proceed to Page 5 . . . Section 32, one to five inclusive. . . Anything further under these Sections, gentlemen? The reason we may not question you on some of these, Mr. Allan, is these submissions have already been made to us.

Section 41, Sub-section (1). . . Section 44. . . this presentation has also been made to us. Section 49 (1) on Page 6. . . Section 49 (2). . . Sections 50 and 51. . .

MR. REAUME: I want to ask a question. . . in the instance of several companies who have moved out of Windsor, whether they be automobile or otherwise, the agreements of those companies properly enforced did not follow those companies into other parts of the Province, and I have asked this question of other people who have appeared here. . . in the opinion of your group, do you feel that these agreements that were properly signed by the automobile workers, or any union in Windsor, ought to follow those companies in the event that they move to other parts of the Province?

MR. ALLAN: Yes.

THE CHAIRMAN: That's what he says in the Brief.

MR. ALLAN: We say this that in any case where the company has agreed to a collective agreement and the company is still maintaining the same jobs as it did before, then that collective agreement holds wherever those jobs go within the. . . well, it's going to be in Ontario but, in the event the company says -- now, our operations are going to continue in full in Windsor, but we are going to increase the number of products or the type of products we're making -- we're going to add to our list of manufactured goods and we're going to open a plant in Chatham. . . that's an entirely different field. But they say -- we're going to take this plant away from Windsor and we are going to put it in Chatham and we say that collective agreement is still in force regardless of where they put the plant,

because we're dealing with the jobs that are in that bargaining unit. We are not dealing with jobs that are outside of it.

THE CHAIRMAN: You also say that -- if the company sells.

MR. ALLAN: Sells. . . they sell the agreement, too.

MR. REAUME: Following that, I wanted to ask one other question. In the instance of the Assembly Plant of Ford's moving from Windsor to Oakville, was it a question of reorganization all over again. I remember at that time there were certain fellows moved out of Windsor, officials of the union, who had to come to Oakville, establish offices and go through pretty much the same business of organizing again. Now, is that true, or is that false?

MR. ALLAN: The company did not fight certification in that case, because they knew it was a lost cause, but they forced the union into expending, I think it was somewhere around in the neighborhood of \$125,000.00 to organize the place when the company knew that it was going to be organized.

MR. REAUME: Now, the other question is. . . were they at the time of opening up in Oakville paying the same wages for the certain. . .

MR. ALLAN: All conditions were exactly the same.

MR. REAUME: Because, in other instances of the plants in Windsor who have moved out, they have made a saving, a big saving in labour costs.

MR. ALLAN: That by exploitation.

MR. REAUME: By exploiting, or whatever you want to say.

MR. ALLAN: They've taken advantage of a labour surplus or a labour force in an area that is willing to work at fifty or sixty cents an hour less in order to get a job someplace. It's just the same as today, we have companies opening up every day in Windsor, and what are they doing. . . they are just opening up and cutting wages down and are

doing exactly the same work as an organized company in Windsor is doing and they are taking advantage of the unemployed condition in Windsor to exploit. . . that's the only word, exploit, for it.

MR. REAUME: That is the very point I want to bring out. Now, it has been intimated through the press. . . I'm not going to say what press. . . but it has been intimated by the press that the reason why certain plants have moved out of Windsor is because of the over-anxious attitude probably of the unions or the labour atmosphere of the community. Now, there is no company who has ever moved out of Windsor who have made that statement. . . there's always other statements. . . but the real fact that in a large number of cases, that the companies who have moved out of Windsor have done so. . . one of the reasons being that they have made a saving in the cost of workers.

MR. ALLAN: At the cost of the workers.

MR. REAUME: Well, at the expense of the workers, and I think that that is one thing that we should try to clear up, if we can. Now, this business of having agreements follow the companies wherever they go might be of a help to a place such as Windsor in keeping them there.

MR. MYERS: It won't just drive them out of the Province, perhaps.

MR. REAUME: Well, I'm not interested in working on what is going to be encouragement for any place in Canada which is opening up scab shops or sweat shops.

MR. MCCURDY: I would like to point out one instance where immediately that the agreement was negotiated for the sale of the property, all the union employees there were notified, they were given forty-eight hours notice that they would be dismissed from their jobs. The same employees got their jobs back, or some got their jobs back, but the people who had been active in union affairs didn't get their jobs back, but at much

lower weeks wages. They took advantage of the sale.

MR. MYERS: Well, don't these things have to adjust themselves. I mean, may not a manufacturer of something in Windsor be forced into bankruptcy because his operating costs in Windsor are too high but if he went to Cornwall he could manufacture at a cost which would. . .

MR. ALLAN: Are we planning a society in Canada that is based on taking everything out of the working man and giving manufacturers the right to manufacture goods at the expense of our people.

MR. MYERS: Certainly not.

MR. REAUME: Well, I think a better expression is this that if the company in operation in Windsor who was making a substantial profit, and most of them were, then what would they want to move to the eastern part of the Province for other than for the purpose of making more and more profit at the expense of the workers.

MR. MYERS: They're making. . . yes.

MR. ALLAN: I think it would be advantageous if the Legislature would decide that we would have a minimum rate and there no one allowed to manufacture a thing underneath that minimum rate and it's a decent minimum rate so a person could come home and say to his wife -- I've put in a good day's work today and I'm getting a good day's pay, you go out and buy what you want.

MR. REAUME: Well, I could agree to that.

MR. ALLAN: I go home to my wife now and say -- yesterday I got \$28.00 a week because Ford's don't need me after sixteen and a half years, and I get \$28.00 a week.

THE CHAIRMAN: This is all very interesting, Mr. Allan, but it's entirely outside our field. . . this minimum rate and maximum rate business. . .

MR. REAUME: I don't know.

THE CHAIRMAN: Oh, yes. We've got nothing to do with minimum rates, or salaries, or wages. . . nothing. This Committee is . . . It is my ruling that the Minimum Wage Act, maximum wages have nothing to do with the Select Committee on Labour Relations. Now we are down to Sections 50 and 51, gentlemen. All very interesting theories but we're. . .

MR. REAUME: But, if you would give us time we could prove that you were wrong.

THE CHAIRMAN: Now, shall we proceed to "Certification" or have we already dealt with it? On Page 6. . .

MR. ALLAN: There is only one thing I would like to impress under this section is that contrary to what you read in the papers the unions are not out for a revolution to take over. You can run your business, anybody can run their business, I don't give a hoot, the only thing I'm interested in is seeing that they don't use me as a weapon to make more money for themselves and advance themselves in this country and to keep me down below the table.

THE CHAIRMAN: Unless they make more money for you, too.

MR. ALLAN: I don't care how much they make for themselves as long as I get a decent wage out of it. I was getting a fairly decent wage when I was working at Ford's, that's only one of them.

MR. MACDONALD: That's part of the problem.

MR. ALLAN: Fifteen and a half years of it.

MR. MACDONALD: That's what I say. . . that's part of the problem. With the Guaranteed Annual Wage wouldn't happen.

MR. WREN: Well, some man in Ottawa says nobody's going to go short.

THE CHAIRMAN: Anything further on the certification, gentlemen? Page 7. . . conclusion. . . Any further questions you wish to

put to the delegation? Mr. Allan, on behalf of the Committee we want to thank you and the representatives of your delegation for this Brief, and I can assure you. . .

MR. MCCURDY: Mr. Chairman, there is one other matter we intended to bring up. . . we were in the hopes that you would have some discussion on jurisdiction because you have devoted this portion of your section to hearings on jurisdictional problems in the Province of Ontario.

THE CHAIRMAN: Well, your Brief doesn't deal with it.

MR. MCCURDY: No.

THE CHAIRMAN: Well, we dealt with it very fully. . . at least, we had a presentation made to us yesterday.

MR. MCCURDY: Well, maybe we can make a statement.

THE CHAIRMAN: Oh, absolutely. If you want to make some statement on it we'd be glad to listen.

MR. MCCURDY: If you don't mind.

MR. PERKINS: I mentioned to Mr. McCurdy before the meeting that we had notice of several jurisdictional disputes in the Windsor area. . . he might like to explain what is happening at Assumption University.

THE CHAIRMAN: All right, proceed Mr. McCurdy.

MR. MCCURDY: If I may, sir. We thought that we should have written something into this Brief, but unfortunately the Building Trades was not able to get this in, but we consider the jurisdictional recommendations which may come from this Board as being vitally important to some trades in the Building Trades. The Building Trades unions have been accused of causing most all of these jurisdictional disputes, it's always a fight between the two unions, or more unions, on a particular job, but it has been our experience in the Windsor area, and it is our contention that management contributes because they do not make the assignments properly, so we brought along a collective agreement which is now in effect in the

City of Windsor where management has signed an agreement giving the jurisdiction of carpentering, setting forms, floating forms to common ordinary labourers. Some eighty per cent of all work over this past winter has been heavy construction form work. The housing has naturally been down because of the tight money policy. We then had to resort to the heavy construction, in other words, the form work, but even the form work is being taken away from us by the employers going in, and he purports to solve all of these problems for you on jurisdiction by trying to correct things from labour's side, but we contend that management's side should be dealt with. . .

MR. REAUME: You say that was a collective bargaining agreement.

MR. MCCURDY: This is a collective agreement. It is only signed not more than one month ago.

THE CHAIRMAN: Signed by the union?

MR. MCCURDY: Signed by the union and the company at the insistence of the company. The company insisted that this particular jurisdiction be written in that the work be done by common ordinary labourers.

THE CHAIRMAN: Who signed on behalf of the union?

MR. MCCURDY: The labourers. It's a first agreement. Duly elected representatives of that union signed for that particular union.

MR. REAUME: For the building of forms.

MR. MCCURDY: That the building of forms be done by labourers where heretofore it has been done for years by carpenters and we depend upon this work. That's why we feel that any decisions or recommendations from your Board are actually vital to us. Because of substitute materials and so on we are losing so very much of our work that any recommendations emanating from this Board may have further serious affect on our particular trade.

THE CHAIRMAN: Were the people who signed on behalf of

the workers advised by the union officials?

MR. MCCURDY: Well, I think it's being pointed out that this is a first agreement. . .

THE CHAIRMAN: I don't care whether it's a first or tenth agreement. . .

MR. MCCURDY: At the insistence. . . of the company. . .

THE CHAIRMAN: . . . was the signing, whoever signed on behalf of the workers. . . had they been advised by the union as to what they should do?

MR. MCCURDY: Well, sir, they're a separate union. They were. . . these are newly organized companies, organized by the labourers' union, and the labourers' union was particularly happy over getting this collective agreement and they have narrowed it down to this one particular point. I mean, everything else. . . all the other contingent points have been recalled, all the problems are resolved in the agreement, so they narrowed it down to this one issue for settling the agreement. So, this committee, partly due to being misinformed and feeling that the companies did not force this, they signed the agreement, but then they come to the Building Trades Council and tell us that they are not anxious, that it is not their intention to infringe upon the jurisdiction of any of the trades, that they have signed this agreement in order to get the other benefits, the other clauses which they were seeking in the collective agreement entered in. But, they signed the agreement, now how do we get away from it. The industry and Labour Board which is also in connection with the Labour Department years and years ago issued the decision that the Industrial Standards Schedules should be interpreted as the form work should come under the jurisdiction of a carpenter.

THE CHAIRMAN: Can you leave the agreement with the Secretary of the Committee, Mr. McCurdy?

MR. MCCURDY: Yes, sir, we will.

MR. REAUME: I just want to straighten out one point on that. They have a Contractors' Association for MacPherson acts. . . now when they get all through with their discussions before an agreement is entered into, I understood that labourers, carpenters, plumbers and electricians and all of them, before the signing of an agreement, that you fellows also have a meeting, don't you?

MR. MCCURDY: No.

MR. REAUME: With the exclusion of the labourers?

MR. MCCURDY: We have a voluntary council, but nothing is reported into there regarding signing of the agreements unless the agreement is brought up in general and then everyone will discuss the agreement coming up, but nothing is decided. This union had actually gone out and applied for certification for one of these companies. . . this is the point that I wanted to make. . . that they have now signed an agreement with four companies. The reason that it is signed on this basis is the fact that these companies got together and drafted actually the wage rates and the classifications into this agreement to cover the labourers' union in order to pay a lower rate of wages for this type of work; they feel that they have a signed agreement with one union, and it's not only our workers involved, but it is bricklayers work, electricians' work, plumbers' work and cement finishers' work -- there are three or four trades who are having their jurisdiction over-run in that agreement.

MR. REAUME: I understand, but I am trying to ascertain --- I know that you fellows periodically, business agents of all the unions, including labourers, have meetings together. Now, why would the labourers break away and sign an agreement of that kind.

MR. MCCURDY: We have no jurisdiction over the autonomy of a local union. Any Council in existence in Canada today is just a

recommending body. When they negotiate an agreement, any local union can negotiate agreements, they don't have to come to any Council and ask the Council for advice unless they so desire.

MR. REAUME: I understand all that, but you are all up there at the Council, and the labourers are part of that. Do you know anything about the negotiations that were going on before this agreement was signed?

MR. MCCURDY: We knew that the agreements were being negotiated, and actually we applauded this particular local union for having gone in and organized the people on the job because they were receiving, although the companies are large reputable firms in that area, they were paying ridiculously low wages. . . and we congratulated them for going in . . . but I could hardly go in and write the jurisdiction for the trade. . . and, also, the plumbers are included in this agreement for fitting conduit. That is also in this particular agreement.

MR. REAUME: And all of these talks were going on between labourers and the other people involved and you didn't know, as a carpenter or plumber or anything of that sort, what was happening?

MR. MCCURDY: No. The Building Trades Council does not interfere in the direct negotiations between management and any particular trade. . .

MR. REAUME: I'm not making myself clear. . . the labourers themselves who are part of the agreement must have known that the clause in there that applied to the building of forms was properly the work of the carpenters. . . now, why would they sign such an agreement?

MR. MCCURDY: In order to get the other benefits.

MR. MACDONALD: Well, the point is this, part of the problem is arising from the demands of management. They didn't have an agreement at all, and if they didn't sign this particular one they wouldn't have

an agreement at all which in effect put the common labourer into the carpenters' job.

MR. REAUME: But, even at that I don't think it justifies that labourers can be forced to sign such an agreement.

MR. MCCURDY: It all depends on which side of the fence you're sitting on. If you're a labourer with absolutely nothing you'll only be too happy to grab at something.

MR. REAUME: Well, when the labour movement gets down so badly that they are going to start cutting each other's throats, that is bad.

MR. MCCURDY: It is the companies that are forcing the labour movement.

MR. REAUME: Well, that is since they were able to do it. But, if the labourers' union had said. . . no, we will not sign such an agreement as long as we have that clause in there which affects the carpenters. . . after all, they are one big group. . . then I think they would have gone on from there and got some things that they wanted.

MR. JACKSON: Are they affiliated with your union?

THE CHAIRMAN: Definitely.

MR. MCCURDY: What we're trying to point out, Mr. Chairman, is simply that this is, in our opinion, a further projection of management toward their objectives of cutting down the labour costs on jobs, and I claim that year in and year out the man hours on a project as far as the carpenter and the other trades is concerned, are reducing because management prefers to give the work to the trade where it is going to cost the least amount of money, and in this case it is going to cost him less.

THE CHAIRMAN: I know, and you on the other hand want more, but here's what I can't understand. . . here's a labour organization affiliated with your union. . . you knew that these negotiations were going on, why you fellows, as experienced men in this business didn't suggest to

these inexperienced negotiators that they should come to you before they signed any agreement is what I can't understand.

MR. REAUME: You can suggest it all you want and they can just turn around and say -- you just go back there and hear those people just sit there and we'll negotiate our agreement.

MR. ALLAN: The point is. . . what I think is being done here. . . is trying to negate the responsibility of management in this. Now there is a provincial set up on these particular jobs for carpenters and the provincial set up. . . that's formed with the Government, mind you, says that this work is the work of the carpenters. Now, you are saying the company was doing nothing, this should be clear. . . it is taking advantage of these facts. . . inexperienced negotiators, the fact that it was a first agreement and the fact that you're going to have to go out on strike when you have got five hundred labourers laid off, if you don't want that in. . . now, what would you do in a case like that. . . you'd say. . . we'd be over a barrel if we ever went out today. . . we'd have no force, we'd have nothing. . . we have nothing to do but give these guys that aren't getting anything a little bit. . . so, they signed it and said we will not enforce the provisions to the carpenters are concerned, but you know what management is going to do -- management is going to force the union to live up to it even though the union does not want to and it is contrary to the provisions that are agreed upon by the Provincial set up.

THE CHAIRMAN: Has this been brought to the attention of the Provincial set up?

MR. ALLAN: Not as yet.

THE CHAIRMAN: Well, it ought to be. Is it going to be?

MR. ALLAN: It certainly will be.

THE CHAIRMAN: Well, let's wait and see what they do with it.

MR. ALLAN: No, but we are just using this as an example of how employers are constantly using the unions and the men to create these jurisdictional disputes. Now, if that came up tomorrow morning, if one of those contractors said tomorrow morning --- get your carpenters off that job we're doing it with labourers. . . brother, you've had it! It would be another jurisdictional dispute. Somebody would then be able to say --- look at those carpenters, look what they've done, the dirty bums, they've done it again and we'd be blasted from here to Hell and back once again at the companies' instigation.

MR. JACKSON: Well, I was just wondering, to get back to jurisdictional disputes, have you ever used the Jurisdictional Board in Washington to settle any of your jurisdictional disputes?

MR. ALLAN: Yes, more times than I can tell you about.

MR. JACKSON: Do you follow the so-called Green Book?

MR. ALLAN: Yes we do, and if I may elaborate a little further, each year we make it a point to mail out copies of the jurisdictional disputes to every employer who is located in that particular area.

MR. JACKSON: Do you find it conflicting in any way because the Washington Board. . . do you find their views conflicting in any way with Canadian work?

MR. ALLAN: No.

MR. GRADY: Mr. Chairman, if I could answer that one. . . we attempted in our last agreement to write in clauses to our agreement stating that once an award has been given from the Joint Board in Washington a copy of this would go to the employer concerned on the job and to the local unions involved and contacted immediately enforce the ruling of that Board and there would be no work stoppages, and this Contractors' Association has actually agreed to that at the preliminary stages and it was finally thrown out when the Conciliation Officer came down and objected

to it. . . that was a Board, not the Officer. . . the chairman, I believe, was Judge Lang. . . objected to that provision being included in it. If the local unions of the Building Trades have such an agreement written into their contract there would be no disputes. If we had the co-operation of the contractors or the people involved on these jobs we wouldn't have these disputes.

MR. JACKSON: This, perhaps, is not in your field, but dealing with contractors as you do you might be able to express an opinion on this. . . do you find most contractors readily accept the Green Book?

MR. ALLAN: In our area they do.

MR. JACKSON: They do. I think the place to put it is in the agreement. I agree.

MR. ALLAN: If this is something they don't give a hoot about, they won't worry about the little Green Book or any other book. They'll do anything they can to force the unions to accept jurisdictional fights.

MR. JACKSON: Yes, but generally speaking?

MR. ALLAN: Generally speaking, they haven't been too bad in most instances, but it has been the instances where you get the jurisdictional disputes that you'll find, if you dig deep enough, that somebody from the company has been in there with a shovel and just piling up the wet stuff up to here and facing that spot all the way through, and it gets kind of dirty on the feet.

MR. JACKSON: I was wondering, Mr. Chairman, what the rates would be with these labourers doing carpenter work and the carpenters?

MR. ALLAN: Approximately seventy to eighty cents an hour.

MR. GRADY: There are two rates involved. . . we have

two zones set up and in one zone it is a lesser rate than it is in the other.

MR. JACKSON: There's a different wage scale for different types of labourers doing different types of work?

MR. GRADY: Yes.

MR. JACKSON: If the labourer is working on forms he is paid more than somebody who isn't.

MR. GRADY: Yes, he receives more than the other labourer does. He receives more in certain instances, but he's equal to in other classifications.

MR. JACKSON: Would those forms made by labourers be as good forms as made by carpenters?

MR. ALLAN: Obviously not.

MR. JACKSON: Would they do the job?

MR. ALLAN: They do the job.

THE CHAIRMAN: Well, whether they would or not, I don't think that's a point in here.

MR. REAUME: Do you find that the Washington Board is a good Board, a helpful Board?

MR. ALLAN: We do.

MR. REAUME: Would you feel that if we had a Board such as they have over there, if we established one here would it be helpful at all in any way, or would you prefer having it as it is.

MR. MCCURDY: Well, Mr. Reaume, I would like to read that agreement to you and show you why we don't want it brought over here. We have a practice established over a certain period of time, but with this type of agreement coming in, it would be inclined to establish what we call "area practice" and the area practice is the people who are actually doing the work and have signed agreements would do the work, and with this type of an agreement where it went before only one company and was

actually certified through this agreement and four companies now have signed it, companies who tried to defeat the union before have come along and voluntarily signed the agreement. The reason for that is that they are in hopes that this Select Committee will set up such a Board here and they can go before them with that type of agreement and say --

MR. REAUME: You don't want a Board. . .

THE CHAIRMAN: I don't think we've ever considered setting up such a Board.

MR. REAUME: No, I think we have.

THE CHAIRMAN: Is there anything further, gentlemen, in connection with this added part to the Brief?

MR. MCCURDY: I think that we would recommend that Canadian management be represented on this Board.

THE CHAIRMAN: That's already been recommended. Is there anything further, gentlemen? Is not, once again, Mr. Allan and members of your delegation, may I, as Chairman of the Committee, thank you for your presentation and it will receive our very serious consideration. Tomorrow morning we are to have Mr. Metzler present the material he was to have presented today. This is the first item of business.

MR. PERKINS: On the agenda I have the Hamilton Municipal Employees' Association and the Ontario Mayors and Reeves Association. It isn't joint, but it is the same matter. . . Section 78. In the afternoon I have the Textile Workers' Union to present a regular Brief.

THE CHAIRMAN: Gentlemen, I now declare this Committee adjourned until tomorrow morning at ten thirty o'clock.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON LABOUR RELATIONS

Committee Room No. 2
Parliament Buildings
Queen's Park
Toronto, Ontario

THURSDAY,
May 1st, 1958.

MORNING SESSION

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Chairman

HAROLD PERKINS

Secretary

GEORGE T. WALSH, Q. C.

Committee Counsel

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Hon. Robert Macaulay

APPEARANCES:

MR. J. B. METZLER - Deputy Minister of Labour
PROFESSOR A. H. LOGAN - Toronto, Ontario

PRESENTATION:

A. BRIEF ON JURISDICTIONAL DISPUTES IN THE CONSTRUCTION INDUSTRY

THE CHAIRMAN: Gentlemen, I see a quorum. The first Brief that we are to hear this morning is a submission to this Committee by the Hamilton Municipal Employees' Association, Local 167, Mr. H. Barker, President. The executive officers are enumerated on the first page of the Brief. The Brief will be presented by Douglas W. McEntee, Secretary and Business Representative.

The procedure that we follow, Mr. McEntee, is that the person presenting the Brief reads it to us first and then you hold yourselves open to questioning from the members of the Committee. You may sit to read the Brief.

(MR. McENTEE INTRODUCED HIS COMMITTEE)

(MR. McENTEE READ THE BRIEF WITHOUT INTERPOLATION OR INTERRUPTION.)

THE CHAIRMAN: Now, then, gentlemen, may I ask are there any questions arising out of the material on Page 1, having to do with jurisdiction, conciliation and scope?

MR. MACDONALD: Well, part of that question, Mr. Chairman, goes over onto Page 2. It raises the question that I think this Committee would be interested in, if Mr. McEntee has an answer. We have been discussing the problem of jurisdictional disputes --- how, in heaven's name, have you arrived at such an amicable settlement of the various divisions, we'll call them, in this field?

MR. MCENTEE: Well, I suggest, Mr. MacDonald, that actually they are much clearer defined edifices to split up here than there may be in some of the trades which have jurisdictional problems. We have municipal fields, we have municipal unions, and we have building service employees and they quite naturally seem to fall into their own orbit with a few strays prior to our setting down jurisdictional disputes, and it was a logical approach to it and everybody accepted it quite willingly.

THE CHAIRMAN: How long has your organization been in

existence?

MR. McENTEE: Our local union since 1943, our national union since 1954 . . .

THE CHAIRMAN: That is, since the Labour Relations Act in Ontario came into effect?

MR. McENTEE: That's right.

THE CHAIRMAN: Anything else on Pages 1 and 2, gentlemen?

MR. BARKER: I'd like to clarify something now, that the jurisdictional disputes which I think you've had a little trouble with has been amongst international unions and mostly with those affiliated with. . . but we've had very little of that problem.

THE CHAIRMAN: You're not affiliated with any international organization?

MR. BARKER: No, we are affiliated directly with the Canadian Labour Congress. We have no affiliation outside of our own group.

MR. MACDONALD: Well, I'm interested in your comment that the difficulty seems to have been dividing up various categories of work. For, example, in the building trades. . . now, you've got various categories of work and you've arrived at a successful division of it without too much difficulty. Maybe it is, as you suggested, because. . .

MR. BARKER: Well, I suggest there are more natural divisions. We just started out, Mr. MacDonald, and said -- all right, the building service employees has this group, and NUPSE has this group, and NUPE has the other group, we'll leave them as they are for the time being; for instance, the building service will take over Roman Catholic hospitals, and the NUPE and NUPSE will take municipally owned hospitals, for the time being, because that is our particular field and the building service haven't got into, so we have no problem really. In the future undoubtedly NUPE and NUPSE will amalgamate and that will iron out another juris-

dictional problem and, then, later on I anticipate that the building service employees and ourselves will get together and say -- all right, you've got some whom we feel should belong to us, but through circumstances you have them now, and we'll split them up -- I don't think we'll have a problem. Our only problem as far as jurisdictional disputes is concerned is one that has been brought to your attention before is some outside organization trying pick craftsmen out of it and you face that with Local 796 here in the Toronto Board at one time.

THE CHAIRMAN: Coverage of NUPE in the hospital field
on Page 2.

MR. REAUME: Up in Hamilton are you only engaged in the field of the workers in the hospitals, or are you engaged in the office workers, for instance?

MR. BARKER: We have the City Hall, too, sir. But, this presentation today that we are talking about is more or less a rebuttal to the Ontario Hospital Association's Brief which we felt was aimed primarily at us.

THE CHAIRMAN: In that they ignored you.

MR. BARKER: That's right. I mean, our type of contract is entirely different and, if they have their way -- if they were able to sway you, it would rule out our type of contract and eliminate a large percentage of our members.

MR. REAUME: If they are able to sway me.

MR. McENTEE: Just to answer that, sir, we have the largest local union of this type in Ontario. There are none that come even close to us.

THE CHAIRMAN: These figures that you've given us from The Dominion Bureau of Statistics reporting a total of 56,616 hospital employees other than nurses and so forth. . . that's over the Dominion of

Canada, is it?

MR. McENTEE: That's right.

THE CHAIRMAN: Do you give us the figure for Ontario?

MR. McENTEE: As much as was available. You will find on Page 3.

THE CHAIRMAN: Oh, yes. 4,410.

MR. BARKER: You see, out of that, sir, we have approximately 1,000.

THE CHAIRMAN: Yes. Anything else on Page 2, gentlemen? Page 3. . . under this item? Page 3. . . Ontario Hospital Association Brief? Your chief complaint here is that they ignored you entirely in their Brief?

MR. BARKER: That is correct.

THE CHAIRMAN: You didn't exist as far as they were concerned.

MR. BARKER: I think the chief point we are making is this that in the Hamilton General Hospital we cover everyone with the exception of the nurses. Because of that we have raised the working conditions and reduced the hours and pay over a period of years, so the working conditions there have become better I would say than in most hospitals in Ontario. . . not all, but most, and we feel that because of our coverage that lab technicians and nurses aides and all are as much entitled to bargain for their working conditions, holidays, etc., as anybody else that works for a living.

MR. MYERS: Supposing the nurses don't want to have you bargain for them?

MR. BARKER: We're not saying that we should bargain for them, sir, we are saying that they should be allowed to bargain for themselves perhaps with a union of their own, if they so desire.

THE CHAIRMAN: Have they made any request for such a

union or any such help that you know of?

MR. BARKER: Well, I'll say this. In the Hamilton General Hospital there is considerable dissatisfaction with the wages because we haven't represented them since 1949, and gradually the wages of the other people are creeping close to the nurses' structure. Because they have nobody to bargain for them they're in a helpless position.

THE CHAIRMAN: A great number of people will never be satisfied with wages or fees, or anything else.

MR. BARKER: We agree with that basically but we contend that the lab technician and the nurses' aides are as much entitled. . .

THE CHAIRMAN: Has there been any request by the nurses?

MR. McENTEE: There has been. . . individual, yes. But, not as a group.

MR. BARKER: The situation actually is this. . . the situation is peculiar as far as the nurses are concerned. They're a little afraid of their own organization and they don't know exactly what is their status in it. Some of the nurses feel that they must be a member of the Nurses Association of Ontario in order to work. That's not true. I know nurses who would be happy to have a union of their own, or be members of our union, for instance, to have somebody to bargain for their working conditions because they have no representation at all, but they are under the peculiar opinion that they must be members of the Nurses' Association. . . well, I maintain that once they become Registered Nurses the Nurses Association no longer does anything for them. It sets their standards and creates their position, it's true in the first place. . . they must pass the Registered Nurse's exams in order to become a nurse, but once they become a nurse they no longer need the nurses organization because it does nothing for them from there on in.

THE CHAIRMAN: Do you recognize the proposition that has

been advanced that nurses do belong to a profession?

MR. BARKER: No. I don't think, in the true sense of the word, you can call them professional people -- they're semi-professional people.

MR. MACDONALD: Mr. Chairman, there is an additional significant point here in this Brief over various other Briefs we have received and heard, that there is a very big difference between positions of nurses being called professional, or call them what you will, and say the doctors in that they haven't got the effective means of coping with their income and their standard of living, and when the Nurses' Association was before us we had the latest figures which happened to be in the paper that day indicating that the average wage of a nurse is \$2,100. Well, to suggest this as a fit wage for a so-called professional person, I think, in today's standards is ludicrous. They have a point here which seems to me to have some interesting ramifications, is that if your Nurses' Association is, for the most part, normally identified with management, how are we going to negotiate for a person who is an employee?

MR. MYERS: You are assuming then, that your Nurses' Association is aligned with management and doesn't care about the nurses? That must be your position.

MR. McENTEE: No, not necessarily that they are aligned with management, but individual members of the executive board are who would make the decisions quite naturally are.

MR. MYERS: The nurses appoint the executive board, the general membership.

MR. McENTEE: But not on the basis that they are to negotiate for them, sir. On the basis that they are to represent them in the fraternal organization.

MR. MYERS: Are there any nurses members on your

---your union?

MR. McENTEE: Not at the present time, no.

MR. BARKER: I think we would like to make it clearer, our position is not that we desire to organize these nurses particularly, but we work with them.

MR. MYERS: Then you don't work with the Association because your views are entirely different from the Association.

MR. BARKER: No. It is just this that we feel sympathetic toward the nurses inasmuch as they are denied any opportunity to bargain for their working conditions. They are in a kind of a vacuum where the Nurses' Association can't do anything for them, nor can we, and they drift along in the middle. In other words, the Windsor Nurses' Association does not bargain for working conditions or hours.

MR. WREN: A recent meeting of the Nurses' Association passed a resolution a couple of weeks ago that they were going to work to set up bargaining units.

MR. BARKER: Well, I can only say that in our hospitals the nurses are not represented by any group. They take what management gives them and they can do nothing about it.

THE CHAIRMAN: Have you ever taken this matter up with the Registered Nurses' Association?

MR. McENTEE: It's a very difficult proposition.

THE CHAIRMAN: That's not the answer to the question.

MR. McENTEE: I am trying to answer your question, sir.

There is a very difficult proposition in this. The first thing that happened when they appeared before the Select Committee -- we heard that they had a Brief -- and I phoned their office in Toronto and asked (a) could I have a copy of their Brief, and could I talk to someone about our stand on the nurses. They didn't want to talk to us at all. They didn't want to send us

a Brief, they would give us no statistics, no figures, no nothing.

THE CHAIRMAN: Why didn't you get in touch with the Select Committee?

MR. McENTEE: Well, we found no point, because we made a determination at that time to present a Brief of our own.

THE CHAIRMAN: Well, I mean, you could have obtained their Brief from us.

MR. McENTEE: Well, we eventually did obtain their Brief, sir. But, if I can just enlarge upon what Mr. Barker was saying here, you may wonder why the nurses, if they are so satisfied with their Nurses' Association, might feel a little disgruntled, I'd like to explain. . . there is less than five dollars difference between a Registered Nurse and a nursing assistant. A nursing assistant, as we have already pointed out, has a smattering, a very slight knowledge of . . . to help as a nurse. . .

MR. MACDONALD: Less than a five dollar. . .

MR. McENTEE: Less than a five dollar spread in a week. Now, I think you do know the training a Registered Nurse goes through and quite naturally they feel they are entitled to be above it. . . we agree with them, but where we have been successfully able to negotiate the nursing assistants up to what. . . we don't agree is the correct wage. . . but we do agree it is a much more satisfactory wage to what the nurses have. . . nothing has been done along the same lines for the nurses, and they feel they have no way out. They have no objection to belonging to the Registered Nurses' Association as a fraternal organization, but they feel that there must be some supplementary organization to try to do the same thing that we are doing, and I wouldn't say that we are not the organization. . . I say we have no plans for the present time to be the organization to sign these people up into a union. But they should be given the opportunity.

MR. MACDONALD: Well, yes, but the key point of your plea

is not that you necessarily want them but that the Act should permit them to have a union if they so desire.

MR. McENTEE: Of course.

THE CHAIRMAN: All right, take Section 78 of the Labour Relations Act. This matter has been very fully dealt with in several Briefs. Page 7. . . Closed Shops. Are you opposed to a closed shop in Ontario hospitals?

MR. McENTEE: It's impractical, sir. The reason we included that small item there was the fact that the Ontario Hospital Association, in their submission, asked you to outlaw closed shops in hospitals, and to our knowledge no such thing exists or could exist for a hospital. It is not practical with the type of employees.

THE CHAIRMAN: Page 7. . . No Strike Clause. . . You have no objection to a "no strike clause"?

MR. McENTEE: I think if you will continue on over into Page 8 that you will find that we have no objections to it being within our agreement, in fact, we have contained it as it is in the Act in our agreement. Where we do have objection is in saying that employees who have no union are still not allowed to strike and do nothing about their welfare, and we make that point in there, I believe.

MR. MACDONALD: Well, I think that is one of the most telling arguments against Section 78, is that they get a union and go on strike. The fact of the matter is under Section 78, they don't get a union and they are even freer to go on strike and do it completely irresponsible.

MR. McENTEE: Which has proven to be a fact, too.

THE CHAIRMAN: Page 8. . . Employees other than Maintenance and Building Service in Unions. . . Page 9. . . Exclusion of Nursing Personnel from Unions. . . Page 12. . . Nursing Assistants. . .

MR. MYERS: Are Nursing Assistants members of the

Nurses' Association or not?

MR. McENTEE: No. But, the Nurses' Association wants them to be members of their Association and disqualified from the union movement.

MR. MYERS: Does the Nursing Assistant develop into a Registered Nurse eventually?

MR. McENTEE: No. I don't think there would be one in ten thousand.

MR. BARKER: I think we can clarify the Committee, Jack, on the difference between a Nursing Assistant and a Nursing Aide; they're practically the same thing but there isn't a certificate.

MR. RAYSBROOK: Well, I think there are various classifications in various hospitals. They go by different names. Their classification would be, first of all, maids in a hospital, and then you would have what we call ward aides. . . I am speaking of the Hamilton area particularly. . . ward aides are the next classification. . . they do some of the maids' work but at the same time they might do a little more in the patient's room than a maid would be allowed to do, or the transfer of patients. A Nursing Assistant, or a Nurses' Aide, are the same thing, and there are two classifications, either they have a certification or they are uncertified. Now, the certification has only come out in the last two or three years when the Province has instituted schools for Nursing Assistants, where they take six months courses and write examinations and obtain a certificate and they certify them. And some hospitals recognize the difference and put them in two classifications of pay, like our own hospital does, which is a difference of three dollars a week between the two grades. . . certified and uncertified. But, to answer your question, they are the type of people who have progressed up maybe from maid to ward aide, but they do not have the educational background that would permit them to go to become

Registered Nurses.

MR. MYERS: You say the Nurses' Association wants to include them in their membership?

MR. RAYSBROOK: Yes, they do. They feel this way, that the Nursing Assistant is now doing part of the work that the nurse formerly did.

MR. MYERS: Are the Nurses Assistants now included in the Nurses' Association?

MR. RAYSBROOK: No.

THE CHAIRMAN: Page 13. . . Technical personnel. . . Change of Name and Successor Company. . . this submission has been made to us on many occasions.

MR. McENTEE: Our submission is made on the grounds not that it did happen but it might happen.

THE CHAIRMAN: On the grounds that new management would take over and the group who were certified would be decertified automatically.

MR. McENTEE: Well, I recognize that, and I would like to discuss this one point, if I may. There is not one change in one iota from today and the day that they received their new status. . . there would not be one thing different. . . everybody who sat before will still sit. . . merely the stroke of a pen will pass financial and managerial responsibility to the hospital so they could quite properly fit into the new hospital scheme. Secondly, it is my understanding that as a municipally run hospital, they are not eligible. I may be wrong on this. . . they are not eligible to receive donations from private citizens. . .

THE CHAIRMAN: Who aren't?

MR. McENTEE: Private hospitals.

THE CHAIRMAN: Who is not?

MR. McENTEE: I mean, municipally run hospitals. . .

A municipally run hospital, if I understand correctly, a corporation cannot raise money that way. . .

THE CHAIRMAN: We've a municipally owned hospital in Renfrew, and if you want to give us a donation, I'm on the Board of Directors and I'll take it back.

MR. McENTEE: My understanding is they cannot go out on the same kind of a fund-raising drive. . . am I wrong in that?

THE CHAIRMAN: I've never known about it. We're going to have a fund-raising drive pretty soon, I expect.

MR. McENTEE: Well, that is what I am informed to be the case, and that is one of the reasons for changing over to, so they can raise the money for expansion which they are contemplating. . .

MR. MACDONALD: You've been talking to another lawyer.

THE CHAIRMAN: Every year, as a matter of fact, if your argument is correct, there could be a change in the Board, there could be an election and the Board of a municipally owned hospital is elected by the people, and the minute there is one change on the Board, if your argument is correct, then the bargaining unit would be decertified because there is a new member on there.

MR. McENTEE: No. Not quite correct. Because their title is the Board of Governors acting for and on behalf of the Corporation of the City of Hamilton and it does not name them, so I cannot agree with you.

THE CHAIRMAN: Well, wouldn't it still be the same?

MR. MCENTEE: No. Because they are the Board of Governors appointed, not elected. They are appointed by the City with the possible exception of one or two members who are appointed from public life.

MR. MACDONALD: Well, essentially this problem is the same

all over.

THE CHAIRMAN: Oh yes.

MR. BARKER: I would just like to say this, that the main problem lies, as far as we are concerned, particularly in a hospital, that we are not worried about losing the jurisdiction of the hospital particularly because this is a closely knit group and it so happens that they are very strong. But, what we would be worried about is if somebody tried to upset the status quo, you could get a situation where you might possibly get into a strike situation over nothing and because the change in the name shouldn't put anybody in that feeling, whether it be just because a change of name would cause the feeling they should go on strike or have to get recertified. It's something for nothing because you go to a lot of expense and trouble and nothing is achieved. In our case we feel sure we would still remain certified, but there might be a lot of trouble in the interim for nothing.

THE CHAIRMAN: Well, we've had this thing . . . Page 14. . . Management Responsibilities and Negotiations.

MR. MACDONALD: Well, Mr. Chairman, this is a interesting kind of situation. . . it seems to me that a union that is faced with a negotiating problem such as they've outlined here where it affects management is so ill defined that nobody has any responsibility, that in effect, management is not bargaining in good faith -- certainly from the union point of view those who are bargaining on behalf of management aren't bargaining in good faith because they have no powers. Now, we've tried to come to grips with this issue of what is bargaining in good faith and this is another kind of situation which, in some ways, falls into that category.

MR. BARKER: We have run into a peculiar situation where we have made an agreement protem with the Board of Governors and had it upset by the Board of Control on behalf of the Corporation of the City of Hamilton, where they people we made the original agreement with couldn't

carry it out because they had no authority to.

THE CHAIRMAN: The Board of Governors should have resigned. That's what we would do very quickly. You are an autonomous body. . . the Board of Governors of a municipally owned hospital is entirely autonomous.

MR. McENTEE: If they want to assume that.

THE CHAIRMAN: Well, they have to assume it.

MR. BARKER: I agree with you that they should assume it, but it doesn't necessarily work out that way.

MR. RAYSBROOK: May I point out, sir, that several years ago . . . to clarify this issue. . . because they said they had no autonomy, we wrote to Mr. Daley who replied that, yes, exactly as you said, they did have full autonomy. . . they still insisted that they did not have, but whether they had or not was not important. When we went in to negotiate with them we would present our original submission. . . they would say, fine. . . we'll take them back and study them. They'd come back in maybe a month and they would hand us a whole new set. . . can't discuss it. . . you'd better study them. . . so we'd phone them up the next day and say we had studied them, let's go -- we'd wait another month and finally they'd say. . . well, now, what do you want. Well, we said. . . that's it. Now, that's fine -- where are you prepared to cut down? Well, we said, let's get at this thing together. . . where are you prepared. . . oh, this is what we've been told to hand you, that's it. . . So, what you say is entirely true, but only if they are prepared to accept that.

THE CHAIRMAN: The only thing we have to do in our Board of Trustees, so far as the municipal authorities are concerned, is to submit our budget to them. Now, they can approve it or disapprove it. . . we've on occasion been required to whittle it down somewhat, but so far as the management of that hospital from entering into agreements on behalf of the

employees, or hiring personnel. . . it is entirely the responsibility of our Board with which the municipality has absolutely not one thing to do. And, that's the way it must be in municipal hospitals.

MR. McENTEE: Have you got any good jobs open down there?

MR. BARKER: Are they organized down there?

THE CHAIRMAN: No. We treat them so well that they don't want to be.

MR. MYERS: Well, the representatives of your union wouldn't be able to, or would they be able to negotiate the contract or would they have to refer to the union executive?

MR. RAYSBROOK: Eventually, yes. But we are placed in the position when we are negotiating that we can give and take.

MR. MYERS: Then you would have to get whatever you gave confirmed, wouldn't you?

MR. RAYSBROOK: Oh, yes, eventually. But we are given the power to amend our demands or to accede to some of management's requests, but by the same token the people management have sent to the table can't do that. They can just lay it on the table and say -- here, this is what the Board of Control says -- and then if we disagree with it they can't make any alterations in it without going back to the Board of Control.

MR. MYERS: You can negotiate, but whatever you do would have to be confirmed?

MR. RAYSBROOK: It would have to be ratified by the membership. . .

MR. MYERS: Yes.

MR. RAYSBROOK: . . . in the final analysis, yes.

MR. BARKER: I think we haven't actually clarified the situation, Jack, in their mind. . . I think. . . it's a hard thing to actually

tell you, but what it actually amounts to, they have appointed the Personnel Director of the City of Hamilton, an employee of the Corporation, to come down and represent them, and in actual facty they come down and negotiate with the hospital board and all we can do is sit back and let the man from City Hall talk for them although they are the Board of Governors. And we felt that this should be clarified and bring in responsible people. In other words, if the Board of Control wishes to do the negotiating for the Board of Hospital Governors, then by all means they should do it rather than subletting it through. The way they do it it's because of the lack of definition in the Act that's it's a more or less go between and it's not to satisfactory way to negotiate with people who have no power.

THE CHAIRMAN: Are your hospitals established by private bills from the Legislature?

MR. RAYSBROOK: I couldn't say.

MR. McENTEE: Yes, they were -- by by-law back in 1930 some odd.

THE CHAIRMAN: By by-law of the municipality or by private bill of the legislature?

MR. McENTEE: By both, I believe.

THE CHAIRMAN: Page 14. . . Compulsory Arbitration. . .

MR. MACDONALD: Well, Mr. Chairman, I've forgotten what the previous submission was that you referred to. . . you say some alternative must be found if hospital employees are to keep in step. What is your suggested alternative?

MR. McENTEE: May I first explain this, and it's necessary to my case. . . I think you know labour unions well around this table, and we are in an awkward position. . . our Ontario Federation of Municipal Employees have a meeting the weekend after next. . . we have not yet had an opportunity to present our views to them, and I would just remind you

that we speak as a local union. . . we agree entirely with Mr. Hearn's submission that there should be compulsory arbitration. That has been endorsed by our membership. Since that time our executive board has submitted a resolution to our convention coming up on the 9th, 10th and 11th to this effect that hospital employees should be removed from the Labour Relations Act. There should be an Act called the Hospital Labour Relations Act similar to the Firemen's Act that these people would be under which would contain compulsory arbitration. As a stipulation to that we do feel that no member of any arbitration board should be a member of the nursing, medical, dental professions or any allied professions, or the National Health Insurance Plan, that impartial people should sit on that. We also feel that many of the things that labour unions have asked for as amendments to the Labour Relations Act should be contained, and we have submitted that in the resolution. For instance, a simple majority of those people voting providing the majority of the people voting are the majority of the people in the plant, should provide certification automatically, and a number of things that I have pointed out. But our basic point is that, in agreement with Hearn, we do agree with compulsory arbitration but we do feel it would be in the best interest of the labour movement as a whole if we were removed from the Labour Relations Act. I think that you recognize that we have had problems within the labour movement itself through our proposed compulsory arbitration, not necessarily for us, but that it might spread and come into their field where they feel it doesn't fit the situation, and I must agree with them. And, not only to combat that argument, but I feel that it would put us in a preferable position where the people who sat on arbitration boards would have not only continuity of service but knowledge of situations and statistics and wages paid, and so on, to provide the instrument that we are looking for.

MR. MACDONALD: Well, what sort of protection would you

get under this alternative Act that you are suggesting? Any further than you get under the Labour Relations Act?

MR. BARKER: I think I could clarify the thinking of the members. They feel that the hospital service is essential as the firemen or police to the welfare of the community and the feeling---I'm speaking for myself, I work in the City Hall group, we have two separate contracts. The feeling of all our hospital employees are that they would hate to be put into a position where they would have to leave a hospital unattended, that it puts them in an unfair position, an even more vital service than the firemen. So, therefore, they feel that the only protection the community could have as much as many of them are against compulsory arbitration as individuals, they feel that it's an essential service to the community that cannot be interrupted.

MR. MACDONALD: No, but let me repeat my question. . . What further protection would you get? You wouldn't get any further protection, it would just be that you would separate yourselves out from a group in the rest of the labour movement because the rest of the labour movement is not happy for very valid reasons. . .

MR. McENTEE: I can't agree with that, Mr. MacDonald. . . if I may, Mr. Chairman. . . my feeling is this. One of the problems that go hand in hand with compulsory arbitration is that the people who sit on arbitration boards have no knowledge of the situation at hand must regard it on its merits as it is presented to them. There are certain exceptions to that. For instance, I believe Finkelman and General Motors has acted for a number of years, they have a panel of arbitrators that has been very satisfactory, and those people have a background of General Motors in all where they understand the problems of the plant, the workers, the management, and so on. I think because of that they are a fair solution. Under the Labour Relations Act as constituted I certainly couldn't begin to guess

the number of chairmen or board members that we might get, but I do suggest that it is quite conceivable that you could build up somewhere in the neighborhood of five hundred different people none of whom actually know the situation and who enter the situation from this viewpoint. . . if they are management personnel appointed by management they are biased in favour of management, and the same applies to the unions, and the judge is sitting in the middle scratching his head and wondering --- well, now, where is the middle path. Our feeling is that under a separate Act separate arbitration procedures could be set up, separate people could be put into that field and stay in that field alone, and I think that would work to the advantage of everyone concerned.

MR. MACDONALD: What would you say to the qualification of a single arbitrator appointed by the Department?

MR. McENTEE: No opposition, providing that the appointee of the Department was a person not allied with anything to do with hospitals or unions.

THE CHAIRMAN: What would you say about a Judge?

MR. McENTEE: I have no argument with Judges as a whole -- but we've had some lousey decisions and we've had some good ones. I sincerely believe that a Judge, (a) wouldn't have the time to spare to go into this field, I do feel that there are other interested citizens who are also disinterested citizens who might serve better than a Judge.

MR. BARKER: I don't think the question Mr. MacDonald actually asked was answered. . . what advantage would you gain under compulsory arbitration that you don't have under the present Labour Relations Act? -- That's the question you actually asked. Well, to answer it, the only position I can say is this, that we actually run a local union that is split into two contracts, one the hospital and one the city hall group; I belong to the city hall group, and it's a mixed executive, and we can have a union meeting

where the people from the hospital would say -- no, we will not accept that contract, because through the conciliation procedure they still say no. . . they call a strike upon the day allowed under the Labour Relations Act. We have people on the executive who fully feel that a strike would be fine, others find themselves in the position to have to desert people at a bed, in their laboratories, technical jobs, and desert people at a time there might be operations on, and they feel that it is not a good thing for a union to do such a thing. If you can understand the viewpoint---we are a union, we feel compulsory arbitration is bad, as an individual. . . in my group at the city hall I am opposed to the city hall group. . . we feel that we wouldn't like compulsory arbitration, but the hospital group feels it is the only way they can get around the fact that they, as citizens, morally and ethically. . . they don't want to have to pull the hospital out. They feel that the people of Hamilton are entitled to go in that hospital and be treated, and it is not a good position to put a union in. That's the reason they are interested in some kind of a set up where they wouldn't have to be put in that position and it would be better than the present Labour Relations Act.

THE CHAIRMAN: Page 15. . . Information and General Observations. . . Any further questions, gentlemen?

MR. WALSH: I just wanted to ask, Mr. Chairman, what wages to the nurses get?

MR. RAYSBROOK: I stand to be corrected. . . I'm not too familiar with the salaries, but I think it is \$54.00 a week.

THE CHAIRMAN: Does that include keep, laundry, board, or is that in addition? They get that in addition?

MR. RAYSBROOK: Well, no, they live out, sir. They have to buy their own meals. We have a cafeteria in which they purchase their meals

THE CHAIRMAN: You mean they only get \$225.00 a month,

approximately?

MR. RAYSBROOK: Approximately, yes.

THE CHAIRMAN: Oh, I think you must be mistaken.

MR. McENTEE: We are quite willing to be corrected.

THE CHAIRMAN: You don't know, though?

MR. RAYSBROOK: Well, I'm looking at it basically. . . we've heard the argument that there's five dollars differential between them and nursing assistants. . . they complain bitterly about it. . . I know my nursing assistants get \$49.50.

THE CHAIRMAN: But, I mean, you don't actually know.

MR. RAYSBROOK: No, I don't know the exact figure, but I'll guarantee that I'm within a dollar or two.

THE CHAIRMAN: Anything else. . . Mr. Walsh?

Thank you very much, gentlemen, and you may be assured that this Brief will receive our very serious consideration when we are preparing our report.

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ONTARIO
LEGISLATIVE ASSEMBLY.

THE PROCEEDINGS OF

THE SELECT COMMITTEE
ON
LABOUR RELATIONS

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TORONTO 5

DATE

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON LABOUR RELATIONS

Committee Room No. 2
Parliament Buildings
Queen's Park
Toronto, Ontario

THURSDAY,
May 1st, 1958.

MORNING SESSION

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Secretary

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APPEARANCES:

MR. J. P. KENT
MRS. MARIE CURTIS

PRESENTATION:

REPRESENTATIONS OF THE ASSOCIATION OF ONTARIO MAYORS AND
REEVES

THE CHAIRMAN: We are now to hear from the Ontario Mayors and Reeves Association. The Brief is being presented by Mr. J. Palmer Kent, Q.C., Legal Counsel to the Association, and seated with him is Reeve Marie Curtis, Vice-President of the Association. You have been before us before, Mr. Kent, I think.

MR. KENT: Not this Committee, Mr. Chairman.

THE CHAIRMAN: You know the procedure we follow here. . . that is, the Brief will be read and then we question you on it.

MR. KENT: Very well. Mr. Chairman, I must say it is very good of you to give an opportunity to the Association of Ontario Mayors and Reeves to address you, particularly on the subject of this Section 78, and I have been asked by them to prepare the Brief and present this to you. Sorry that the President is unable to be here this morning. I had a wire from him just before I left my office, that's Mayor Dickerson of North Bay, and he says -- Unfortunately, unable to attend morning session at Queen's Park. I am sure Mr. Simpson, or Marie Curtis, could substitute satisfactorily. Now, Mayor Simpson is not here either, but I have Mrs. Curtis here, who is the Vice-President of the Ontario Mayors and Reeves Association, and also the Reeve of Long Branch. The only thing about Mrs. Curtis, this morning is, that she doesn't agree with everything I'm going to say and she would like to have an opportunity of speaking to you about her own municipality afterwards.

THE CHAIRMAN: We are always pleased to hear disagreements between the male representative of the presenting delegation and the lady members. Will you proceed, please.

MR. KENT: Mr. Chairman, I would like to add, also, to that if I may that this Brief was sent out on April 3rd last -- that's rather a short time for municipalities to act. It was sent out on April 3rd last to 229 municipalities, that is 29 cities, 76 towns, 93 townships, 31

villages and they were asked to reply by April 21st, which was also a very short time to give them, but we were trying to get a Brief that we could present to your Committee here. And I have a few replies only. . . the great majority haven't seen fit to reply, and I take it that they haven't any serious objections to the Brief when they didn't reply promptly. But I would, if I may, like to submit one or two replies that I have received.

The is from the Town of Barrie. . . from the Comptroller-Treasurer. . . in which he said. . . we feel that in order to protect the health of an urban municipality Section 78 of the Labour Relations Act is a must.

Then there is one from the City of Windsor, from the Clerk. . . The following recommendation from the Board of Control was adopted by City Council on April 21st, 1958, that the following recommendations made by the Association of Ontario Mayors and Reeves to the Select Committee of the Ontario Legislature on Labour Relations be endorsed. And they endorse B and C of our recommendations, which I will come to in a moment. . . and A is the one that deals specifically with Section 78. . . they say, Item A with respect to the recommendation of the Committee that Section 78 of the Labour Relations Act be not repealed is being given further consideration and you will be advised of Council's decision in this matter in due course.

Then I have one from Mr. Corner, the Town Clerk of the Town of Dundas. . . he says: His Worship Mayor Warren has directed me to advise you that he has studied the Brief prepared on behalf of the Association of Mayors and Reeves submitting representations to the Select Committee on Labour Relations and that he has nothing to add to the Association's recommendations to the Select Committee.

Then I have one from the Reeve of the Township of Crowland. He says, . . . Due to the lateness of the arrival of your Brief I find myself in a position where I am unable to agree or disagree with the contents of

your Brief. Please be advised that I will have the Brief brought up for discussion with my Council at the earliest convenience and the decision of the Council will be forwarded directly to the Select Committee on Labour in Toronto.

THE CHAIRMAN: That is here. Would you like to hear it now?

MR. KENT: Very well, Mr. Chairman.

THE CHAIRMAN: (Reading) The Select Committee on Labour, Parliament Buildings, Toronto, April 23rd, 1958. . . Gentlemen: I have been instructed by Council to write you with reference to Section 78 of the Labour Relations Act. It is the request of Council that this Section which allows municipalities the right to refuse to recognize a union for their employees be removed from the Act. Please advise as to the action in the matter.

MR. KENT: That's fine. Then Crowland is in favour of the removal of the Act.

THE CHAIRMAN: It is signed by Arthur H. Creamor, Township Clerk and Treasurer.

MR. KENT: Then from the Clerk of Council, Mr. McGibbon of the City of Kingston. . . Mayor Boyce presented your letter of April 3rd concerning the Labour Relations Act to City Council on April 14th. Your Brief has been referred to the Administration Committee for their consideration. As this Committee does not meet until April 22nd we will not be able to have an official reply back in the time requested by your. However, the City of Kingston has enacted a by-law under the provisions of Section 78 of the Labour Relations Act and I would presume that our Council is in full accord with your Brief.

MR. MACDONALD: Well, Mr. Chairman, may I ask Mr. Kent a question there. . . is that presumption necessarily valid? In St. Michael's Township, for example, it was enacted last fall to forestall the organization

of some of the school board employees, and in discussing this with some members, they said -- well, as long as the power is there we'll use it -- if it isn't there, fine. . . but, frankly, my own personal view is neither here nor there. So I don't think that presumption is necessarily valid.

THE CHAIRMAN: Well, we'll take it for what it's worth.

MR. KENT: Then from the Town of Capreol, Ontario, the Mayor Harold Prescott. . . he says. . . I am in receipt of your letter of April 3rd. After having studied the Brief thoroughly I wish to say that I am in perfect agreement with the contents of same although I have no further suggestions to offer.

Then from the Clerk of the Township of Toronto. . . This is to advise you that the Council of the Corporation of the Township of Toronto endorses the Committee's suggestions regarding labour relations.

And then from the City Manager of the City of Woodstock. . . We acknowledge your letter of the 3rd instant regarding the Select Committee on labour relations. A suggestion from our City Council is that consideration be given to the setting up of a permanent board to handle the matter of arbitration and conciliation for municipalities throughout the Province of Ontario." That's a matter I'll speak about later

Then in addition, the City of Woodstock have passed a resolution and that resolution is included in a letter dated April 29th addressed to the Select Committee of the Ontario Legislature on Labour Relations, Care of The Association of Ontario Mayors and Reeves, so it came down to me and I'll hand that in. Maybe I'd better read their resolution.

"Whereas most urban municipalities have to negotiate working agreements with firemen and policemen's associations each year, and whereas if a municipality and the Associations are unable to reach agreement the matter is referred to a Board of Arbitration. Whereas the decision of the Board of Arbitration is final and binding on the municipality and the

employees' association and whereas the constitution of the various Boards of Arbitration is determined by each municipality and employees' association, and whereas judgments or rulings by Boards of Arbitration do not appear to follow any set pattern because of the natural variance in opinions of the many different people who are selected to sit as members of Boards of Arbitration, and whereas if a permanent Board of Arbitration was set up to arbitrate when agreement cannot be reached, all agreements with firemen and policemen, or a selected list of arbitrators determined, the municipality's unemployed would be assured of consistency in judgments and assured that arbitration proceedings are conducted by arbitrators who have had wide and specialized experience in determining agreements between municipalities and firemen and police associations. Now, therefore, be it resolved that the Legislature of the Province of Ontario give consideration to the enactment of legislation which would establish either (a) a permanent Board of Arbitration for the arbitration of agreements between municipalities and firemen or police associations, or a selected list of arbitrators from which municipalities and employees' associations could choose a Board of Arbitration to arbitrate agreements failing agreement being negotiated by the municipalities and employees' associations, and that this resolution be forwarded to the Ontario Municipal Association, The Canadian Federation of Mayors and Municipalities and the Select Committee of the Ontario Legislature on Labour Relations.

And then, last but not least, I have a resolution passed in Long Branch. That is the one that Mrs. Curtis will refer to, and the letter from the Deputy Clerk says. . . With reference to the Brief to be presented Legislature regarding repeal of Section 78 of the Ontario Labour Relations Act, the views of the Council of the Village of Long Branch are expressed in Resolution Number 76 passed at a meeting of Council on April 9th, -- / ' that resolution reads: That Section 78 of the Ontario Labour Relations Act

be repealed, that the said act be amended to provide for compulsory arbitration of disputes between municipal corporations and public utility employees and that the said Act be further amended to provide for the setting up of a separate municipal arbitration board to settle all disputes involving municipal corporations and that copies of this resolution to be sent to the Ontario Association of Mayors and Reeves, the Municipality of Metropolitan Toronto, the Town of Mimico, the Town of New Toronto and the Township of North York. It is signed by Reeve Curtis.

MR. MYERS: Apparently the Brief has not received the approval of nearly all the municipalities. How did it come to be drawn and who does agree with it and when you read it for whom are you speaking positively?

MR. KENT: Mr. Chairman, the Ontario Mayors and Reeves Association meet once a year actually in their annual meeting. They have an executive as well and sometime ago they had a letter before their meeting regarding particularly the representations that had been made about Section 78 and they passed that a Brief be prepared by the Secretary and myself to represent them on this subject.

MR. MYERS: Are you reading your own Brief there?

MR. KENT: Yes, but it has been sent to all these municipalities and I just quoted the results of the replies. There is no other way of really coming to. . .

MR. MYERS: No, but let me say, Mr. Kent, I appreciate the value of your opinion even if it's your opinion alone. I am not questioning its value. I was wondering just how much support it has had in those Mayors and Reeves.

THE CHAIRMAN: Might it be the reason that you haven't heard from these other municipalities since the 3rd of April is that a large number of them have either not put themselves under Section 78 or, if they

did a large section have now withdrawn from the safeguard of Section 78?

MR. KENT: I think the great majority are under the Act. I haven't any figures on that, but I think the great majority are, in dealing with their employees, accepting the provisions of the Ontario Labour Relations Act and I am sure they will continue to do so. And I think the great majority agree with what is set out in the Brief, but naturally there will be some who do not.

MR. MACDONALD: The thing that makes me a bit puzzled about . . . it seems that some of the replies you have. . . take the one from Barrie where they said, "For the protection of our citizens we feel that Section 78 should stay in there." Well, I wonder if they are aware of the fact that for the protection of their citizens they may face greater danger of strike with Section 78 in there than if it were out. Therefore, they are not aware of the full implications of it. It seems to me this is something that has grown out of experience. For example, just to take one instance of a year or so ago, where they availed themselves of the powers of Section 78 in Lindsay and after about two weeks of the consequences they saw that they had made a mistake and they reversed their stand. Now, it seems to me that many municipalities just haven't had the opportunity to think through in terms of what they would state as the objective, namely the protection of their citizens and the most amicable kind of labour relations.

MR. KENT: Oh, I am sure there are a great many that really lack the experience in labour relations matters and lack advice on the subject, too. I am a respecter of that, Mr. Chairman, but probably if I read the Brief. . . then I can answer the questions afterwards.

MRS. CURTIS: If I might, Mr. Chairman, I would just like to speak about this particular Brief and I am sorry, as the First Vice-President, that I do not concur in it, but if it has been passed by the Association at a duly constituted meeting, then as the first vice-president

I would have to go along with the majority. But, the time element has been the factor in this whole thing. For instance, the night the executive met it was stated in the letter we received that this answer had to be in by April 21st and my own municipality would have made our own submission but we were never invited solely by ourselves, and that's why we had to answer in the manner we did. Now, I wonder, if we had known that this Committee was still going to be sitting, the executive would never have dealt with it in this manner, they would have referred this to the open conference in June, and then you have to abide by the majority rule.

THE CHAIRMAN: Well, Mrs. Curtis, this Committee was appointed by the Session of 1957. We began our sittings in June, I think it was, of 1957. . . the fact that we were sitting as a Committee was advertised in the local papers here in Toronto and all over Ontario and anyone who cared to make a submission to us was invited to do so, so that it is not our fault that you weren't notified of this until such a short time before you were required to either agree or disagree with it. I mean you've had over a year.

MRS. CURTIS: I am not blaming this Committee. I do feel this that this Committee, set up for a specific purpose, and I do feel that you want to get a real cross-section of opinion, and I think that on the opinions which you receive you will be guided and, therefore, I am only saying that the Mayors and Reeves in supporting Mr. Kent, that the Mayors and Reeves would never have done this this way if we had had a little longer time to bring it to the convention, and therefore I feel sorry in that respect to be opposing the Brief, but I have to do it in this manner because my municipal council so directed. But Mr. Kent and the Secretary certainly have given a lot of thought in this, but naturally -- you know, Mr. Chairman, the way things are --- you send the Mayor an invitation and now -- for instance, I got my letter on the 9th of April and that was the night of the council meeting and I have many correspondence which comes from the Secretary---for instance, some-

times he sends me cheques to be signed on behalf of the president who is up in North Bay, and I thought this envelope, for instance, that night was one of these cheques to sign; I thought, well, I'll read that after council tonight because I'd just come in from a strong debate with another Commission with which you are probably familiar, and when I opened it after the council here I find that this is an important Brief and I had to reconvene my council in order to get the assessment of my council. I am only making this explanation so that this Committee will know that I'm not opposing the Mayors and Reeves Brief in any other manner, and I am sorry because I certainly have great respect for Mr. Kent and also the dealings of the Mayors and Reeves.

MR. MYERS: Have the executive of the Association seen the Brief, and do they concur in it?

MRS. CURTIS: We have never had a meeting.

MR. MACDONALD: Well, Mr. Chairman, speaking for myself and maybe the rest of the Committee may express a view afterwards, it seems to me that it would be useful if this could be discussed by open convention in June. We won't have, I suspect, have come to our very final draft of our report by that time, although we are moving toward that, and since there is obviously divided opinion, even in our presentation here this morning, this is important enough that we get as good a cross-section as possible and your convention in June might be the place to get it.

THE CHAIRMAN: When is your convention?

MRS. CURTIS: The 24th to the 26th of June.

THE CHAIRMAN: Well, I was hopeful that we would be finished by that time.

MR. MACDONALD: Well, maybe if you're divided you'll just have to leave it to our good judgment.

THE CHAIRMAN: I mean, we've been sitting now since June of last year and several Briefs have contained reference to Section 78

which I am sure must have been brought to the attention of the Mayors and Reeves Association. What I can't understand is the long delay that has occurred and then coming to grips with this problem.

MR. MACDONALD: I am certain that some of the letters that you've got from Mayors -- the people themselves don't agree with it -- I won't mention the names, but I know one that came in there that I'm convinced as I'm sitting here that that man hasn't a clue as to the implications of Section 78, because I know the man well and he happens to be a staunch trade unionist, and any staunch trade unionist who would go along with a proposition of keeping Section 78 in there. . . I just can't believe.

MR. KENT: There are a number of very good ones on municipal councils, too.

THE CHAIRMAN: Let's hear the Brief, anyway, Mr. Kent.

(MR. KENT READ BRIEF IN ITS ENTIRITY)

THE CHAIRMAN: Thank you, Mr. Kent. Are there any questions, gentlemen, arising out of Page 2?

MR. MACDONALD: Mr. Chairman, I find it difficult to formulate questions because the whole basic concept I think is so mistaken that I don't know where to dig into it. . . for example, in this Section I here . . . you say -- "this distinction may be valid" -- that is true, the distinction between a municipal corporation and another corporation, but that still doesn't get to the basic points that our trade union Act, and I think this is generally accepted, that any employee has the right to join a union of his choice and by what right have we as legislators to place in the law something which in effect deprives them of that right -- because that's what Section 78 does. I want to come to this at a later point, but you say that if Section 78 is in there then they can bargain through some other kind of committee or that they can still have their unions. The fact of the matter is that most municipalities that use Section 78 aren't using it for the purpose of

being able to bargain with some other union, they're using it for the purpose of keeping unions out of there altogether. I am not aware of any case where they bargain with another union outside of -- after they've availed themselves of Section 78.

MR. KENT: Well, they always did. . . I merely submitted. . . they always did before they had the Labour Relations Act and. . .

MR. MACDONALD: Well, apart from the few who happen to have had unions down through the years---we had unions long before there was a Labour Relations Act -- now, the net effect of Section 78 is not normally to leave them free to bargain with another union whether it be a company or company union or what you will. The net effect of it is that it gives them the power to keep any kind of union at all from arising in there, and I think in doing that, in effect, the law arrogates unto itself within this certain sector the depriving of people of what is normally considered a basic right, namely, to join the organization of their choice.

MR. MORNINGSTAR: Mr. Chairman, what other employees would there be then. . . I mean, you have the firemen's association, you have the police association, would it be just the people working on the streets?

MR. KENT: Well, now, in Toronto particularly, we have a Local 79 which is all the inside employees and Local 43 which is all the outside employees. . . the street cleaning people and the parks people and so forth. They bargain with all of them. Now, what happens is, when a stationary engineer, and I just wanted to make a point about that. . . when the stationary engineers, for example, as a group, wanted to be certified the unions came to the council and asked them to pass a by-law taking them right out of the Act. They took advantage of Section 78 in that sense and stopped the raiding of these other unions by the stationary engineers. That's one purpose of the Section. I quite agree it's not the

main purpose.

MR. MACDONALD: I think that is the gross abuse of the purpose and is so conceived by many people who. . . mind you, I have sympathy for the proposition that you don't want to have a multiplicity of using. . . but the net effect of your argument -- not necessarily in Toronto where there is a tradition of unionism -- but generally across the province where there isn't a tradition of unions in municipalities, is to deprive them of the right to have any union.

MR. KENT: Sometimes, in a case of emergency, it has been used in that light. I think that's so. But, I think also that the great majority of municipalities in Ontario have not passed any by-law taking themselves out of the Act and take advantage of the fact that they have all the benefits of the Labour Relations Act. If I could just mention to your Committee if it hasn't come to your attention, maybe nobody else has but I would like to mention the new provisions of Section 365 of the Criminal Code. . . that's the Section, as it is drafted now, which deals with the essential services and people leaving essential services, and unless you are under the Labour Relations Act this particular Section isn't nearly as valuable to a municipality. . . Section 365 is. . . Everyone wilfully breaks a contract knowing or having reasonable cause to believe that the probable consequences of doing so, whether alone or in combination with others, will be to endanger human life, to cause serious bodily injury, to expose valuable property real or personal to destruction or serious injury, to deprive the inhabitants of a city, or place, or part thereof wholly or to a great extent of their supply of light, power, gas or water, or to delay or to prevent the running of locomotives, is guilty of an indictable offense and is liable to imprisonment for five years or an offense punishable on summary conviction. And then, Section 2 says -- No person wilfully breaks a contract within the meaning of sub-section 1 by reason only that (a) being

the employee of an employer stops work as the result of the failure of his employer and himself to agree upon any matter relating to his employment, or (b) being a member of an organization of employees formed for the purpose of regulating relations between employers and employees he stops work as a result of failure of the employer and the bargaining agent acting on behalf of the organization to agree upon any matters relating to the employment of members of the organization if before the stoppage of work occurs all steps provided by law with regard to the settlement of industrial disputes are taken and any provisions for the final settlement of differences without stoppage of work contained in or by law deemed to be contained in a collective agreement is complied with and effect given thereto. No proceedings shall be instituted under this Section without the consent of the Attorney General. -- Now, that's a fairly strong section which all municipalities, if they are properly advised, want to have the benefit of, so there's nothing so far as. . .

MR. MACDONALD: Mr. Kent, do you know, has that ever been implemented.

MR. KENT: This is the way it's been revised.

MR. MACDONALD: Well the amendment was made about three or four years ago, isn't it? A couple of years ago. . . my question still stands. . . Do you know has that provision ever been implemented?

MR. KENT: I don't know if they have ever prosecuted anybody under the Code.

MR. MACDONALD: It is my personal view that if ever actions are taken under that that they are going to bedevil labour relations seriously.

THE CHAIRMAN: There will be a good test of that in about two weeks' time. . . the C.P.R.

MR. DREW: That's a thought.

That's the axe they're holding over the heads of other unions in support of these firemen. . .

THE CHAIRMAN: Gentlemen, we're dealing with Section 78 of the Labour Relations Act.

MR. WREN: Coming back to Section 78 -- the witness is suggesting here that this is going to encourage the municipal councils to stay out of the Act. . .

THE CHAIRMAN: To stay in the Act.

MR. WREN: No. . . stay without the Act.

THE CHAIRMAN: As I understand it from Mr. Kent, the municipalities would be anxious to stay in order to have that Section as protection.

MR. KENT: To have the full benefit of that, that's my feelings.

THE CHAIRMAN: The employers, as I understand it, if they are following the recognized labour laws in effect at the time, so if the employees of the municipality are organized and carry on proper bargaining, conciliation, and so on, before they take any strike action that cannot be imposed.

MR. WREN: So that if the employees of the municipality are organized and carry on proper bargaining, conciliation and so on before they take any strike action that cannot be imposed.

THE CHAIRMAN: Except in certain cases.

MR. WREN: What you are doing there is suggesting that you would encourage municipalities to pass a by-law to stay out from under the Act so they could use that anytime they wanted to.

MR. MACDONALD: Your argument is self-defeating.

MR. KENT: Well, I submit now -- my submission is that if the public are not supplied with water or something like that as the result of a strike the public would want to know that their council had taken every advantage of not only of the Labour Relations Act, but also. . .

MR. MACDONALD: No, but Mr. Kent, this states specifically that only when they have gone through the procedures laid down in the Labour Relations Act can they then avail themselves of these powers. Now, if you have Section 78 in the Act, you implement it -- you take them out from under the Act and they can act as irresponsible as they want, they are not violating any labour relations act, therefore you can't use that Act. Your argument is completely self-defeating.

MR. KENT: What is the Department's opinion on that, Mr. Chairman?

THE CHAIRMAN: You're basing your conclusions on a false premise. This is not the idea of it at all. Mr. Kent, as I understand it, in reading the section, stated that certain things and certain services cannot be done, but then the man is not guilty of an offense if his organization, after going through all the steps provided by the Act, then stops work, but there is no offense.

MR. MACDONALD: No. But, Mr. Chairman, you're emphasizing the point. . . if they are taken out from under the Act they can't go through all of the steps provided under the Act, therefore you cannot make them criminally responsible and avail yourself of the power of the Criminal Code.

MR. KENT: If they're not under the Act and the result is that the work is stopped you could go after them much quicker.

MR. MACDONALD: Oh, no. If they are not under the Act you cannot then say to them that they have not conformed with the procedures laid down in law for collective bargaining. They have got to be under the Act to be subject to the impositions of those procedures.

MR. MYERS: To be accepted. . . Tell us in layman words what this section means, Mr. Kent.

MR. KENT: Well, to my understanding, if I can put

it this way -- under the Labour Relations Act the main purpose is conciliation. Once you have a conciliation agreement that agreement provides for compulsory arbitration. Once you have that compulsory arbitration you have a means by which you are not so likely to go on strike. Now, then, if you are not so likely to go on strike, you're not going to get involved in this provision under that Act. . .

MR. MACDONALD: Mr. Kent, if you have compulsory arbitration available under the Labour Relations Act at all. . .

MR. KENT: Well, I'm in the way. . . Mr. Chairman, I'm speaking now of -- once you have a collective agreement. . .

MR. MACDONALD: . . . or agreement and conciliation, compulsory conciliation. . .

THE CHAIRMAN: Well, he hasn't said there is compulsory conciliation.

MR. KENT: Once you have that collective agreement you can have what terms you like, but one of the terms particularly deals with the matter of -- an arbitration provision in collective agreements -- in Section 32 of the Act. . . it says, "Every collective agreement shall provide for the final and binding settlement by arbitration without stoppage of work of all differences between the parties arising from the interpretation, applications, limitations and alleged violations of the agreement."

MR. MACDONALD: Well, we're talking about two different things. This arbitration in this case, is arbitration of some difference that has been arrived at -- some differences have arisen as the result of a contract -- but if under Section 78 you take the employees out and as is the case with most municipalities they don't sign a contract, they don't permit them to form a union at all, then they are not obligated to follow any of the laws laid down in the Labour Relations Act, therefore the municipality couldn't use those powers in the Criminal Code at all.

THE CHAIRMAN: What do you say, Mr. Metzler?

MR. METZLER: The section of the Criminal Code is directed toward an individual, it's not directed toward a trade union. As I listen to Mr. Kent, in the first part of the Section, the individual has no -- he's subject to a penalty if he does certain things. He gains a certain amount of protection if he can bring himself within the purview of Sub-Section 2. Now, Sub-section 2, if I remember what was read, says that -- "if he stops work after having exhausted all the procedures required by law," then he is not liable to prosecution. The thing is that insofar as collective bargaining is concerned if a municipality were to, say, pass a by-law, even in the face of an organizational drive, it would strike me that the obligation to the individual to keep himself within the provisions of Sub-section 1 of this action, still stands. That would be my view on the thing.

MR. WREN: The C.P.R. doesn't interpret it that way.

THE CHAIRMAN: We are not dealing with the C.P.R., nor with the Kellogg report. Let's confine ourselves to this Brief here.

MR. METZLER: Mr. Walsh may not agree with me.

MR. MACDONALD: Well, I don't see how you can argue on one hand that a person should have the power to take them out from under the Act which lays down certain rules, regulations and obligations, and then say to them that if you don't follow these rules and regulations and obligations you'll be subject to the fantastic penalties that are laid down in the Criminal Code. You can't have it both ways. Either you keep them in the Act so that they're obligated and therefore they have to take the consequences of those obligations, or if you take them out from under the Act, you take the consequences.

MR. KENT: Mr. Chairman, I am not trying to ask that they have it both ways, that's certainly not it at all. What I am saying is that when the Labour Relations Act was drawn it was not drawn at all with

the idea of a municipal corporation being an employer. They left all of the necessary provisions out as to how a municipal corporation could get into labour relations at all. There is no provision for the council delegating anybody to bargain on his behalf. There's nothing like that in the Act, and therefore they went right through the Act and at the end put in the section that said -- all right, if any municipal corporation wants to have this Act available to it, it could do so and left that section in for that purpose. But then I say that because of the Criminal Code provisions, it's to the advantage of every municipality to have that Section in the Act to take advantage of the Labour Relations Act. I'm saying that it encourages municipalities to be under the Act rather than trying to get them out of it.

THE CHAIRMAN: Well, if it does, what's the objection to removing Section 78?

MR. KENT: If they remove Section 78, Mr. Chairman, then there has to be a great many other provisions put in the Act to cover the case of municipal corporations. There must be some means of. . .

MR. MACDONALD: Well, Mr. Chairman, I would say Mr. Kent is on unchallengable ground in this proposition as he defines, as he quotes from the Act there -- if municipalities haven't been given the specific powers to set up a bargaining unit, and so on, obviously they are going to have, or our Act just hasn't kept up with the times. But, I don't see why, in doing that, you also have to keep Section 78 in.

MR. KENT: I think if you take 78 out -- I think it's an advantage to have it in, but if you take it out you have to have a number of other provisions to protect the municipality.

MR. MYERS: If you don't -- then what?

MR. KENT: Then if you don't the municipality is run by the employees completely. The council has no real means of bargaining with them or dealing with them at all. This is the kind of thing, for

an example -- I mention this as an example, Mr. Chairman -- we had a matter of conciliation with our union, The Municipal Employees' Union, Local 79, and the Conciliation Officer was Mr. Denis -- the city had appointed counsel, Mr. E. Macaulay Dillon was the counsel on behalf of the city and the personnel officer was there and one of the other solicitors in our office was in attendance, but the conciliation officer couldn't get any place in those conciliation proceedings because he had no person to speak with authority, and so he finally wrote a letter to Mr. Dillon, and he said -- "This is to confirm arrangements made for a meeting Friday in this office, the Department of Labour, while I have the greatest respect for your judgment in connection with conciliation matters, I must point out to you that there is little or no hope of progress in the settlement of the dispute if the principals are not present and take part in the necessary discussions. Since they are the only persons who have authority to make decisions I therefore strongly urge you to have with you at this meeting people who are authorized to make decisions on behalf of the City of Toronto."

MR. MACDONALD: This is the point Hamilton used.

MR. KENT: Exactly. We're in agreement on that, that now there are no persons under the Municipal Act authorized to make decisions on behalf of the City of Toronto except the Municipal Council. This is a legislative body. And I give you the example of bargaining with the Provincial Assembly -- supposing your employees wanted to bargain here with the legislative body of the province, how could they do it? And you are in a much better position here to do it because you have a government system and a cabinet system to speak on behalf of the government. We have nothing like that in the municipalities. We have no person to speak on their behalf. In this case they got the Board of Control down to this meeting -- it was at two o'clock in the morning -- and so the conciliation officer could talk to them all and they finally agreed to recommend the settlement to council,

which was as far as they could go, and the bargaining representatives on the other side. I mean, the conciliation officer has to have people in one room and then he speaks to the people on the other side and tries to get them together. That's the whole purpose. He doesn't hear both sides and then make a judgment or decision. He has to bring the parties together. That's his purpose. And there is no way in dealing with a municipal council to bring the parties together.

MR. MACDONALD: I would say that you are absolutely right there must be amendments to the appropriate Act, it may be the Municipal Act, rather than the Labour Relations Act, which you did and then the power to appoint a bargaining committee which can then negotiate. . .

MR. KENT: And enter into agreements, and so forth.

MR. MACDONALD: Yes.

MR. METZLER: Mr. Chairman, there is this observation that I would make on this proposition, and that is this -- that I don't think that any municipal council at anytime would be willing to surrender the final disposition or acceptance of a settlement, even if it were negotiated, to a group, say, even of its top officials, because after all these settlements cost money and they are, in a sense, the people who have to determine your tax rates and to decide what the effect is on the budget. In ordering negotiations between a corporation, say a company, and trade unions, despite the fact that the company considers that it is bound by method of settlement here, I want to assure you that the agreement, for that document is not signed without immediate consultation with people who have the authority to say "yes" or "no" to the proposition.

MR. MACDONALD: Why can't it be done by a bargaining committee set up by the municipal council?

MR. METZLER: I'm not saying it can't, Mr. MacDonald. All I am saying to you is this, in practical bargaining if, for instance,

there's, say, five cents on the table and the proposition becomes clear that there's an agreement to be reached, say, for seven cents, the man, the personnel director or the solicitor of the company is not going to say -- sure, we'll go for the extra two cents. He will go and find out whether he can go for the extra two cents.

MR. MACDONALD: This is no argument against establishing a bargaining unit.

MR. METZLER: I know, I am not claiming that. I mean, in practical bargaining. . . the people will go back. The thing is that you can go back a lot faster to a private employer than you can to a municipal corporation, and despite the fact that you might give more extensive powers to the municipal council to delegate their functions, in the final analysis before this committee will say -- sure, we'll go for that -- they'll get in touch with the mayor or the responsible officers to find out whether or not they are prepared to accept that.

On the present boards of corporations they still do that.

THE CHAIRMAN: Certainly.

MR. MACDONALD: Trade unions do.

MR. METZLER: No. The trade unions are in a different position. They have to go back to their members.

MR. MACDONALD: No, just to this extent - - I think there have been many cases when a trade union negotiating committee is negotiating and they have gotten at a certain stage and they are not certain whether this is going to be acceptable to their membership, they would call an emergency meeting.

MR. METZLER: They do that, Mr. MacDonald, but usually the minutes of settlement are prepared and the union undertakes to refer the terms of this memorandum to a trade union meeting to be called for

the purpose of considering it and to recommend its ratification. But, that is because of the peculiar nature of the union. It is not a corporate body and you've got to get an expression of the views of the employees.

MRS. CURTIS: Mr. Chairman, both the City of Toronto and the Council of the Metropolitan of Toronto, have both done this very thing this year with the approval of Council and they set up a negotiating committee to deal specifically with the unions, and they are now, although they have not reached a conclusion and they are going to arbitration, but they have done this very thing, and some of us don't agree with it, but nevertheless, we have to go along with the majority of council's ruling and that was what they decided in Toronto and Metropolitan Toronto this year, because, as you are aware, that Metropolitan has the same two unions, or three unions I should say now, that Toronto has, so that they usually try to work in conjunction, but they have applied different various things.

MR. MACDONALD: Was your point, Mr. Kent, when you quote later the Municipal Act, that in effect the setting up of a bargaining committee is not a legal procedure?

MR. KENT: They have no authority at any time.

MR. MACDONALD: There is no authority to do that?

MR. KENT: That bargaining committee representing municipal council has no authority to say or do anything. As was said in the Brief which was put in a short time ago.

MR. MACDONALD: But, can a council, in effect, say to a bargaining committee that we delegate this authority to you within certain framework and if you are going to get beyond that framework you will have to come back to make sure that you've got that authority on a continuing basis?

MR. KENT: That's something a private company can do very easily, because a private company -- supposing they are negotiating

as to whether there is going to be an increase of ten per cent or three per cent, and the private company can tell them privately -- we'll authorize you to go as high as six per cent in these negotiations. A council can't do that with a bargaining committee. Their meetings are in public, and even if the meeting were held in private, whatever they did would very soon be published. They are at a great disadvantage in that kind of thing. And so the committee goes into the negotiations, if there is a committee representing the council -- they go into it without any instructions or any right to say and do anything.

MR. MACDONALD: It's just possible to say a few things after the council has left, it seems to me, by way of general guidance.

MR. KENT: They have to go back, and it's the same way if it gets down to a conciliation board or an arbitration board, or anything else, anybody representing council has no authority really to say anything on behalf of the council.

MR. MACDONALD: Because it is difficult there's no reason why those areas that haven't got a tradition of trade unions, such as you have in your experience here in Toronto, should be deprived of building that tradition and of getting unions in there.

MR. KENT: I'm only saying, Mr. Chairman, that Section 78 is an advantage in view of the fact of the way the present Act is drawn, and if the Act was revised, the Labour Relations Act considerably revised so that we could deal with all this matter of municipalities, or any other legislative body negotiating -- the provincial government, if you like -- there is nothing in the Act about the provincial government negotiating. If it was revised to cover such situations as that, then it may be that you could take 78 out. But, until that time I don't think you can.

MR. MACDONALD: Mr. Chairman, we're still on Page 2 -- I just want to make this comment and not go into any lengthy argument on it -- on your point two there -- you see, this is where I find myself in sort

of basic disagreement with your premise -- your argument is that we've got to keep Section 78 because of the fact that many of the municipalities council people are not sufficiently familiar with the general subject of labour relations.

Well, it strikes me that this is not a valid argument. If a person is elected to a job and his job involves labour-management relations, it becomes his responsibility to become experienced in it, and to argue that because he isn't experienced, therefore you should, in effect, deprive the employees of the right to the normal processes of collective bargaining. It just doesn't add up.

MR. KENT: That's really put in as an argument to illustrate the difference between a municipal council and the private corporation.

MR. MACDONALD: All I am saying is that it is a poor argument.

MR. KENT: Well, I think that there are changes from time to time and any person who is experienced in municipal council, I think, would bear that out. Probably Mrs. Curtis could say more about that. But, I am not trying to put any reflection on any member of the council when I say that. But, they are not familiar with it like they have had some experience otherwise.

THE CHAIRMAN: Page 3, paragraph 3. . . Any questions? Paragraph 4.

MR. MACDONALD: Well, I think this is a point, quite apart from Section 78 that it has validity and something should be done about it. If Mr. Kent's argument is valid, that the Municipal Act does not give them the power to set up a bargaining committee and delegate some authority to go ahead and negotiate in good faith, then the Municipal Act, I think, should be changed.

MR. KENT: If your Committee goes so far as to make those agreements binding on successive councils, and so forth. . .

THE CHAIRMAN: Well, I don't think we can. That properly comes under the Municipal Act not the Labour Relations Act.

MR. MACDONALD: Well, would it not be within our . . . province to say that in our recommendation, since we're dealing only with the Labour Relations Act, we recommend this and we point out that this can't be fulfilled, that the change must be made in the Municipal Act.

THE CHAIRMAN: That's right. Paragraph 5. . . Page 4. . . Appointment of a Bargaining Committee to represent council. . . we have already dealt with that. Section 78. . .

MR. MACDONALD: On point one there, I have made this point, but it seems to me that it is important enough that I would like to reiterate it though. I think, with all respect, Mr. Kent, your personal experience is in an area where if you were to avail yourself of Section 78 you couldn't escape bargaining afterwards, because the union's there. But, the import of this final portion of the sentence in point one -- that each council may decide whether the many advantages of the Labour Relations Act apply to that particular municipality, when as a matter of fact in the most municipalities, the great majority across the province, it is if you leave Section 78 they'll avail themselves of it for the purpose of not negotiating and of forestalling the emergence of any kind of collective bargaining unit with the employees, and I don't know that you personally in the light of your experience in Toronto, would necessarily agree with that. Unless you want to turn the clock back an awful way.

MR. KENT: Let me say this, Mr. Chairman, if I may in answer to that, and I am more or less expressing a personal view when I say it -- the fact that the Section is there is a little bit of a safeguard to the municipalities so that the parties do negotiate and rather than try to intimidate or threaten one another in the proceedings. I mean, the council on one hand, can always have this behind them, the right to pass this and

get right out of the Labour Relations Act altogether. It is some protection to municipalities in that sense.

MR. MACDONALD: You are talking about a municipality which now has a union. You say the fact that they do negotiate, but in the great many municipalities they don't have unions. I wish we could find out how many there are, but Professor Finkelman has told us already that it is almost impossible to know, in all the variety of municipal organizations, to which Section 78 applies to know what the score is. . . but, in most of them, they are not going to negotiate if they use Section 78. . . they have used it not to negotiate so that they won't be in a position to negotiate.

MR. KENT: If Section 78 were out of the Act, there might be much more intimidation, and so forth, go on on both sides than takes place at present when the union know that we've got to go and negotiate on a friendly basis with whoever represents them. If we don't do it on quite a friendly basis the council can turn around and pass a by-law and stop all the proceedings.

MR. MACDONALD: I don't think the municipalities need all that extra power.

MR. KENT: Well, they are at a great disadvantage in bargaining, I can tell you that.

THE CHAIRMAN: Page 5, paragraph 2. . . Page 6. . . continuation. . . paragraph 3.

MR. MACDONALD: Here again, Mr. Chairman, it seems to me this is a procedure which is common to so much of our way of life. . . we take an issue to court -- sure, when the decision of the court comes down somebody is not going to be happy, but this is going bedevil the whole of our public operations, I just can't see.

MR. KENT: It doesn't help them any.

MR. MACDONALD: It has been said that the man who appeals

the case is the one who's lost it, isn't that right, Mr. Walsh?

THE CHAIRMAN: Page 7. . . The recommendations. Any further questions, gentlemen? Mr. Kent, and Reeve Curtis, may I, as chairman of the committee, extend to you our very sincere thanks and I can assure you that your presentation will receive our very serious consideration.

MR. KENT: Thank you very much, Mr. Chairman.

MRS. CURTIS: Mr. Chairman, as Reeve of my municipality, may I make a few observations? And I want to divorce myself from being the First Vice-President in any remarks I might make, and one thing, Mr. Chairman, Mr. Kent has mentioned to you that in Toronto they were out from under the Act and that they had some difficulty and then that they got in under it. Now, when Metropolitan was first formed we had this discussion on the floor as to carrying on the same procedure as Toronto, of being out from under the Act and that there was a mutual agreement between the employees and the City, and they wanted to follow the same practice in Metropolitan Toronto. I, as one member, objected and I objected for the reasons that years later they had to come to. . . I objected for this reason . . . I said that I felt the municipality had no protection, that they could go out on strike if they were not satisfied and leave us with, for instance, water, sewage disposal plants, and so on, in a very serious state. The council at that time took recognition of the experience of the City of Toronto's representatives and I, naturally, lost. But, let me tell you that last year Metropolitan Toronto and Toronto proper were darned glad to get in under Section 78 because the very same thing which I pointed out to them in the beginning came into force and the employees said they were going on strike, and I recalled as an executive members of Metropolitan Toronto that we had a very quick hurry-up meeting to get our employees in under the Act. Now, I maintain, and my council maintains, that every civic employee should have the right of security of being in under the Act the same as any other

industrial worker or anyone else, because the very fact that Mr. Kent mentioned on Page 2 about the change-over of Mayors and Reeves and School Board members, and so on, and that they are not familiar is one of the basic reasons why we should have our civic employees under Section 78, because in an area municipality this year, for instance, there was quite a change-over and the members not being familiar and there became a jurisdictional dispute, and they immediately, not understanding, withdrew the employees who had bargained, some of them for fifteen years, withdrew them from under the Act . . . and let me tell you this that they then began to intimidating the workers . . . for instance, taking Statutory holidays off and they have done it and they are not back under the Act yet. And, so, you see years ago, gentlemen. . . I had occasion to speak to a school teacher as to why she was working in a store. . . she said. . . I said. . . When you've gone through for a teacher, goodness sakes, what would a capable person like you be doing working as clerking in a store. . . she said. . . Well, I had to consent to the Board that I would teach Sunday School on Sundays. Now, gentlemen, I know cases in my own municipality when I went there to live forty-three years ago where the civic employees had to do work on the reeve's property to hold their job, and they had to patsy around them all the time. . . now, let me tell you, because you happen to be a civic employee should be no disgrace, but we should have our civic employees protected the same as any other workers, and our Brief here suggests that you repeal Section 78 . . . we also suggest that you have compulsory arbitration boards. . . because, why should a streetcleaner, or waterworks man be any different than a fireman or policeman, because those services in health, and everything else, are just as important to our municipalities as the police or firemen. And, also, we maintain that there should be a special board to deal with municipal problems. Now, I don't feel that it's fair, and my council concur in this, that a municipal employee can be compared to industrial. For instance, this year

there were many industrial people who, through recession, were laid off and they would have been glad to have had a position as municipal workers in '57. Now, the pay may not be as high as industry but they have a certain security which is unlike industrial, and so, we maintain that the judges or arbitration boards, they sit on an industrial problem, haven't always got it at the fingertips -- the board from industry versus civic -- and we think that if there was one board to deal with municipal problems that the municipal differences might be arrived at in fair manner as it does in municipal. And I think in some of the disputes, in awards which were handed down to the City of Toronto proper, there might have been some differences in those awards if the people on the boards were dealing specifically with municipal problems and not comparing those with industrial pay, because there is no comparison. And I say that in all fairness to the municipal workers, but I do appreciate, gentlemen, this Board looking into this, and as I said before, I'm sorry that I had to come to you in this manner this morning, but in view of that fact, if this Board (Committee) was going to be deliberating longer, I would certainly like an opportunity for this question to come before the open mayors and reeves conference, and whether they agreed with my ideas or not, I will abide by the majority at that time.

MR. MACDONALD: Mr. Chairman, supposing this Committee were to recommend in our judgment that we should retain Section 78, and you discussed it as a responsible body and said it should be eliminated, we can't do anything about the Act, all we can do is recommend. It's the government that has to take the action.

MR. MYERS: Why should Section 78 be good for some municipalities and not good for others? Why shouldn't it either be better to have it, or better to put it out? Why should there be any discrimination? Why should the employees of one municipality be treated in a way different from the next?

MR. KENT: Well, I submit that that is a matter for the council to decide.

MR. MYERS: Well, why should it be? Why should't they all be treated the same?

MR. KENT: Because I don't think the province doesn't want to force councils to come under the Act. . . they just don't want to mainly.

MR. MACDONALD: The province has an obligation to see that people have basic rights that are laid down -- the basic right to join the union of their choice and no newly elected group of people without experience should have the right to deprive them of that right.

MR. KENT: No. I don't think so either.

THE CHAIRMAN: Thank you very much, Mr. Kent and Reeve Curtis, I assure you again we'll give this matter our carefull consideration.

Gentlemen of the Committee. . . I have a little communication here from the committee we appointed on the 29th of April. "In accordance with the resolution passed by The Select Committee on Labour Relations on April 29th, 1958, the undersigned begs to report. Two tenders were received for report the public proceedings of the Committee (a) a tender from Angus, Stonehouse and Company by shorthand (b) tender from W. J. Binkley by tape recording. There was some variation in the method of tendering by page, total number of copies required, number of words on a page, etc., which necessitated calculating the ultimate cost. On the basis of the lowest tender we recommend that the tender of Mr. W. J. Binkley be accepted. Signed Roderick Lewis, Clerk of the Assembly, H. Perkins, Secretary of the Committee." Now, I will entertain a motion, gentlemen.

Moved by Mr. MacDonald, seconded by Mr. Wren that the recommendation of the committee appointed by us be adopted. All in favour?

Carried.

LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON LABOUR RELATIONS

Committee Room No. 2
Parliament Buildings
Queen's Park
Toronto, Ontario

THURSDAY,
May 1st, 1958

AFTERNOON SESSION

JAMES A. MALONEY

Chairman

HAROLD PERKINS

Secretary

GEORGE T. WALSH, Q.C.

Committee Counsel

MEMBERS:

G. E. Jackson
Donald C. MacDonald
Ellis P. Morningstar
Raymond M. Myers
Arthur J. Reaume
H. Leslie Rowntree
George C. Wardrope
Albert Wren
Hon. John Yaremko
Hon. Robert Macaulay

APPEARANCES:

MR. PAUL SWAITY
MR. JOHN WHITEHOUSE

PRESENTATION:

A BRIEF BY THE TEXTILE WORKERS UNION OF AMERICA.

THE CHAIRMAN: Gentlemen, I see a quorum. This afternoon we are going to hear a submission from The Textile Workers Union of America represented by Mr. Paul Swaity, Canadian Director, T.W.U.A., and John Whitehouse, Educational and Publicity Director of the same organization. You may sit down, Mr. Swaity and the procedure that we follow here is that the Brief is to be read to us and then you hold yourselves open to questions which we may direct to you.

MR. SWAITY: Having not witnessed any of the previous Briefs submitted, if we don't follow your correct record I hope you will check us up for it.

THE CHAIRMAN: All right, we will.

(MR. SWAITY READ BRIEF WITHOUT INTERPOLATIONS TO END OF SECOND PARAGRAPH AT BOTTOM OF PAGE 3):

". . . Either approach meant unwarranted delay in negotiations."

MR. SWAITY: And, I might add, Mr. Chairman, that the occasion provided an opportunity for the employer to wipe out completely all previous contractual gains and an opportunity to engage in an anti-union campaign to destroy the union in the plant.

(CONTINUES WITH BRIEF TO END OF FINAL PARAGRAPH AT BOTTOM OF PAGE 6):

". . . or put on straight salary."

MR. SWAITY: Mr. Chairman, I would like to comment further on this part. I wonder whether you would do it now?

THE CHAIRMAN: Yes, go on.

MR. SWAITY: The owner of this particular plant is the Burlington Mills from the U.S.A. This company has over a hundred plants in the U.S.A. They pride themselves on the fact that they can avoid union certification in any of their plants through a procedure which they have adopted. The management has repeatedly stated that it is a cheap way of

avoiding a union even if five or six people are fired and they have to put them back to work and even pay them back-pay in terms of avoiding a union. In Canada this company has two plants. In Quebec the company has used the Writ prohibition, the injunction to avoid bargaining with the union in Quebec, and I am sure that even though we are certified in this plant at Narrow Fabrics, if this Board would like to witness and see day by day the manner in which a company operates to avoid its responsibility in collective bargaining with the union, all they have to do is keep up to the history day by day of what would be happening in this plant here, because I am sure they will be following the practice that they follow every other place of refusing to bargain in good faith with the union.

MR. MYERS: Have you established the bargaining unit?

MR. SWAITY: Since being certified we have asked the company, sent a letter to them asking them if they would arrange for a meeting. . . they have not answered our letter. In fact, I can give you the dates. . . that was sometime ago.

MR. MYERS: And, what do you think they'll do now?

MR. SWAITY: They will stall, and I am sure that another year will go by before we can have any real negotiations to the extent that the conciliation chairman, or the conciliation board may push them, there may be some attempt to sit down. But they are in the process of attempting to liquidate the union support in that plant. In one way by buying them off, and another way by intimidating them in the plant.

MR. MACDONALD: Have you a particular solution for the problem of the refusal of management to bargain in good faith? It is something that has been presented a number of times, and certainly from my point of view and I think it is true of the committee as a whole here, a little perplexed as to what the best solution is.

MR. SWAITY: Well, I suppose if any of us are involved

where we refuse to abide by the law of the land there usually is some penalty imposed to make sure that we abide by it, and I don't think that in the case of employers refusing to bargain that they should be permitted to avoid their . . . abiding by the laws of the country and get away with it.

MR. WREN: Well, how would you make them do it?

MR. SWAITY: I think by . . . 1. . . a penalty imposed for refusing, if found guilty, of refusing to bargain in good faith. . . that's one approach.

MR. WREN: That's the difficult way.

MR. SWAITY: In the United States the feature has been to . . . at least, a number of experiences in the past . . . for the government to step in and set up what they would consider a contract suitable under the conditions and the company had to abide by it.

THE CHAIRMAN: Don't you think that if we were to do something. . . if after you ask for the company to sit down and bargain with you and they refused, to say a week or ten days elapsed from the time of your request and has done nothing, that you should then have the right to have the conciliation officer go in, and if nothing is done after that, after a reasonable length of time has elapsed, that you would be free to use the economic weapon . . . would that be a solution to it?

MR. SWAITY: Well. . . perhaps let me. . . I have another illustration, and after that you can go back to the question you have asked, because it illustrates, I think, why it's not possible under these conditions, probably to use strike action.

THE CHAIRMAN: All right. Do you want to proceed with your Brief now? Is that the illustration?

MR. SWAITY: I think if you let me proceed, then we can go back because this point comes up repeatedly.

(RESUMES READING BRIEF AT TOP OF PAGE
7 TO END OF FIRST PARAGRAPH ON PAGE 7):

MR. SWAITY: I might add that at this particular hearing this employee was represented by counsel which he claimed that he had retained, and it was obvious from, to everyone there, that the counsel was paid by someone else.

THE CHAIRMAN: Was there any proof of that?

MR. SWAITY: There is no proof of that.

THE CHAIRMAN: Was there any finding of that nature made by the Board?

MR. SWAITY: No, there isn't.

THE CHAIRMAN: Well, I think we should confine ourselves to findings and not what you think, Mr. Swaity. I mean, we don't want to. . . we want to receive this submission in a courteous manner, but unless you have proof of these things I don't think it helps your case any to present them.

MR. SWAITY: The only thing I might say, Mr. Chairman, that in all these cases of unfair labour practices your difficulty is in obtaining the proof under these conditions.

THE CHAIRMAN: Well, I suppose the Crown has great difficulty in producing evidence sometimes that a man has committed a murder with which he is charged. If first they can't. . .

MR. SWAITY: The Crown has resource to other media of getting the facts which we haven't. They can be called in and forced to testify, put on oath, etc. We haven't got that opportunity. We are supposed to produce the facts when we haven't got the media by which to gain the facts.

THE CHAIRMAN: Well, I suppose, if a man was asked if he was paying his own counsel or somebody else was and his answer was "no", and the Board didn't make any finding that he was being. . .

MR. SWAITY: But, the Board had the power to investigate whether that was so. If the Board had the power. . .

THE CHAIRMAN: The Board has no right to do that.

MR. SWAITY: This is what I'm saying. . .

MR. MACDONALD: No, but, Mr. Chairman, if we are going to pursue this point, surely the relevant point is that the Act doesn't place the same obligations on the petitioners to reveal their sources of funds and everything else as it does upon the union.

THE CHAIRMAN: Oh, I assume that it does. They can be asked on cross-examination who's paying.

MR. MACDONALD: The Act doesn't lay it down. . .

THE CHAIRMAN: He says here. . . that on cross examination, this fellow admitted that he witnessed only twelve signatures and as a result the petition was dismissed. On cross examination he would have the same right to ask the witness. . . now, here you have Maloney appearing as counsel for you, who's paying? And, the man is either going to perjure himself and says he's paying and somebody else is. . . I mean, that's no. . .

MR. SWAITY: I mean, Mr. Chairman, in terms of getting the first evidence there. I would say that if the Board was empowered wherever they have any suspicion that the Act had been violated, or the principle of collective bargaining, or the rights of the employees to obtain a union free of intimidation, if there was any question in regard to these things, the Board had the power to go in on their own and the Board investigate, then I think evidence could be collected.

THE CHAIRMAN: You don't arrest a man on suspicion in the courts.

MR. SWAITY: No, I'm simply saying, Mr. Chairman, that if, by Act, a change in the legislation, the Board was given this power. . .

MR. WREN: Why wouldn't you instruct your counsel or your representative to be prepared to ask the question. . . ?

MR. SWAITY: Because we can't go into the plant. . .

MR. WREN: Well, wait a minute. . . your representative

whoever he was on cross examination must ask this question of about the signatures, and this man admitted there were only twelve. Why didn't he follow that with another question, if he desired, as to who is paying his accounts, and he probably did, but it doesn't appear in your Brief.

MR. SWAITY: Mr. Chairman, I think I am being sort of spiked back in a corner on the statement of this. . . I'm trying to point out the broad aspect of the inability of the union to obtain the factual, legal documentation to prove a case against an employer who is violating the law.

MR. MYERS: Well, Mr. Swaity, this is very simple, all you have to do is ask the man -- who paid for your counsel. You've got that right.

MR. SWAITY: This paying the counsel is not an important point.

THE CHAIRMAN: Well, you brought it up!

MR. SWAITY: I brought it up, that's right.

THE CHAIRMAN: And you said it was a very important point.

MR. SWAITY: I didn't say. . .

THE CHAIRMAN: Well, you wouldn't have mentioned it if you didn't consider it so.

MR. SWAITY: I brought it up only to indicate. . .

THE CHAIRMAN: You see, when you get so radical and so far astray on these things that you can't see any good in anybody else's point of view on it, it doesn't help your case a bit.

MR. SWAITY: Mr. Chairman, I. . .

THE CHAIRMAN: No, no. . . I mean, I don't appreciate that sort of argument at all and I don't think any person would. I mean I proceed on the assumption, certainly there are some boards of management that still don't recognize the trade union movement, and if they do they do it reluctantly. We're out to try and make those fellows recognize it, but we

don't proceed on the assumption that every employer of labour is against labour, and if you are trying to convince us that they are you're not going to succeed in convincing me.

MR. SWAITY: I don't think we were trying to convince you that every employer is opposed to a labour organization. There may be a few, but I don't think. . .

THE CHAIRMAN: Let's proceed with this.

(MR. SWAITY RESUMES READING BRIEF TO THE MIDDLE OF SECOND PARAGRAPH ON PAGE 7):

". . . was used to block the union's certification."

MR. SWAITY: Mr. Chairman, in this case a large number of the active union employees were laid off.

MR. MYERS: Did you have them testify before the Board?

MR. SWAITY: Let me continue. . . There then followed. . .

THE CHAIRMAN: I wish you would continue and read the Brief without any side remarks until you've concluded your Brief.

MR. SWAITY: Well, I'm trying to make my point.

THE CHAIRMAN: All right. Go on.

(MR. SWAITY RESUMES READING BRIEF TO END OF THIRD PARAGRAPH AT BOTTOM OF PAGE 7):

". . . in favour of the management's anti-union program."

THE CHAIRMAN: Mr. Metzler, is that not considered an unfair labour practice when management sponsors a petition against the union?

MR. METZLER: Well, what I would say is this, it could be raised as part of the union's case in the certification procedures.

MR. REAUME: Even prior to that time, would not the union then be able to wire the Minister or the Department for leave to prosecute.

MR. METZLER: They would make application to the Labour

Relations Board, apply for prosecution to the Board. If the employee was dismissed they would make the complaint to the Minister and he would assign a conciliation officer to investigate it and if the officer reported that he felt that there were grounds for the appointment of a commissioner, then we would put in a commissioner to look into it.

THE CHAIRMAN: Yet, Mr. Metzler, this man says there is no penalty. . . there's no remedy where a company sponsors a petition circulated against the union. Now, my question is, would that not be considered an unfair labour practice?

MR. METZLER: I would say so and they could apply for leave to prosecute.

THE CHAIRMAN: Well, I would think so.

MR. MYERS: That was the unfair practice referred to in Narrow Fabrics, wasn't it?

THE CHAIRMAN: That was the only unfair practice.

MR. SWAITY: There isn't very much you can do.

THE CHAIRMAN: You can apply for leave to prosecute, can't you?

MR. MACDONALD: Yes, but, Mr. Chairman, let's not miss the point, in this case they applied for leave to prosecute . . . the point is . . . that by this procedure, admittedly illegal and likely for which they would get a conviction in court, the management reached their objective--- they kept the union. . .

MR. REAUME: Well, what is the answer to it. . .

MR. MACDONALD: The answer is the secret vote. . . that is the answer.

MR. REAUME: There is an answer, but how do we ever find it.

MR. MACDONALD: It seems to me, and I have suggested it

many, many times. . . I suggest that the answer is that you leave the union with the right to prosecute is a long and tedious one and not exactly. . .

MR. REAUME: Well, what is the answer to it? I would be interested in hearing it.

MR. WHITEHOUSE: There is one point I would like to make, Mr. Chairman, with regards to these types of relief that Mr. MacDonald mentions, that even where an organization campaigns where we have employees and there have been firings -- as there were in Spin Rite, and we apply for a commission, perhaps reaching the point where the time taken for the commissioner to investigate the actual firings, while it may result in re-instatement after many months, of the people fired, works to the detriment of the union in respect to its strength following eventual certification. And, I suppose, many unions at this point are beginning to reach the conclusion that where there are firings through an organization campaign, it may not be better to proceed without objection to certification and attempt to get re-instatement through negotiations rather than through a commissioner. The time delay, I think, is an important factor, and the end results, while getting two people back may mean the dissolution of the union itself. This is the problem we are facing, you see.

MR. MYERS: Let me speak just for a minute about the Spin Rite, therein you say you had a petition with a substantial majority. . . now, the matter went to vote, a secret vote, and you've lost.

MR. WHITEHOUSE: That's right.

MR. MYERS: Now, we have had employers say that unions, too, use force to get people to sign petitions, and why wouldn't this be a sample of that. . . here you've got petitioners in great majority to sign a petition, but when these same petitioners had a secret vote they voted against the union . . .

MR. WHITEHOUSE: Precisely, sir, because of the reason

I outlined that commissioners were going in to investigate the firings during this whole period and a tremendous length of time had gone by. If we had had that vote immediately upon application and not applied for commissioners with respect to the discharges, in all likelihood we would have likely won that vote. But, over the long period of time. . .

MR. MYERS: Well, what happened in this long period of time?

MR. WHITEHOUSE: Well, people had been discharged. . . you can use your own judgment as to the feeling in the plant after people are discharged in the plant.

MR. MYERS: The conclusion I draw is that most people didn't want the union at the time of the vote, otherwise the vote would have. . .

MR. WHITEHOUSE: This is one week after the people have been discharged.

MR. MACDONALD: Mr. Chairman, they were terrified by management to vote against them.

THE CHAIRMAN: No, I think it is unnecessary to delay and prolong the matter, I think. . .

MR. SWAITY: Might I just make this point? That there is a tremendous difference between the **kind of** intimidation that a union can engage in to get someone to sign an application card and that of management, because of the relative position that one occupies. The management of a particular plant, engages the worker, has a right to hire and fire him, promote him, demote him, and so on. . . the intimidation may go in terms of whether that plant will continue in the town, and so on. . . now, I think it would be naive of us to even think that in all these cases, and because of the nature of our industry, the textile industry, being found in small towns, usually one-industry towns, where the industry plays a vital role within the economics of that town. . .

THE CHAIRMAN: It's the most unstable industry there is in business.

MR. SWAITY: Look, with all these added conditions it is very easy for the employer who doesn't want the union and particularly because of the difficulty the industry finds itself in and there has become the mad race within the industry as to who could get cheaper labour at all times, and it's because the union presents difficulty in this program of obtaining lower rates by the employers that the employer is able to gather around him people within the community, many of them of status who, given some time, can destroy the union within the plant. Not because the people say I don't want the union in the plant, but because of the other fears, etc., which have been sort of instilled, indoctrinated during this period.

MR. MYERS: But, these other fears are probably very real fears. I am referring now to Dominion Woolens which told its employees we can't operate unless you take a reduction of thirteen per cent in your pay, is that intimidation. . . ? Anyway, the employees took a reduction of fifteen per cent in their pay and nevertheless the company went bust, and when it said it couldn't operate that's just what it meant, it couldn't operate.

THE CHAIRMAN: A textile plant in Renfrew closed down and one went into bankruptcy.

MR. SWAITY: This business is a different problem altogether, for example, in the woolen mill there was a union of which the company engaged in the reduction of wages. . . and there have been many occasions when because of the pressed conditions within the industry as such the union has agreed to reductions. So. . . what I'm trying to point out is the difference between that and the employer refusing or bypassing, circumventing the law, permitting workers the right to join a union of their choosing free of intimidation and coercion.

MR. REAUME: Well, I agree. . . it applies in other

industries as well. . . the auto industry. . . I have oftentimes heard it said that if the union activity in a certain plant didn't stop being so strong and forward, that there was always a possible danger of that certain plant packing up and getting out of town. Naturally that frightens the people who work in the plant. That's being used in every industry and I agree, it's wrong. And, it isn't only industries that are broke or going broke, or having a hard time either, but actually it is being used as a weapon over the heads of people working in the plant, people who have an interest in the community . . . they just bluntly say. . . if this thing doesn't stop we'll pack up and move.

(FIVE MINUTE RECESS CALLED BY CHAIRMAN)

THE CHAIRMAN: Thank you, gentlemen.

(MR. SWAITY RESUMES READING BRIEF TO THE END):

THE CHAIRMAN: Thank you very much.

MR. SWAITY: Mr. Chairman, may I just add one point. . . in the case of the Canadian Worsted at St. Thomas, we have been certified . . . and this sort of brings out the conditions that exist. . . we have been certified in there since 1948 off and on, and I say off and on because since 1948 we have had to go through five certification tests in that plant. We lost one, the rest we all won, and during that whole period we have only had a signed contract for about three months.

MR. REAUME: Strange.

MR. MACDONALD: When I originally asked the question of bargaining in good faith the kind of problem we have often been presented with was the management that would sit down each day and they will say a few things and then you go away. . . this isn't bargaining in good faith.

MR. SWAITY: This is but part of the tactics they will use. They were stalling. For example, the last time we were certified was

in 1956. . . March '56. . . we have not yet got a contract.

MR. MYERS: How would you get to be certified in that plant?

MR. SWAITY: By petitions with a vote. . .

MR. MYERS: With a vote or with a petition?

MR. SWAITY: I think there were four votes in there.

MR. WREN: How many members do you have in Ontario, approximately?

MR. SWAITY: About 16,000.

MR. WREN: And, how many would you estimate are working in the industry?

THE CHAIRMAN: 48,000. . .

MR. WREN: So you've got about a third.

MR. SWAITY: You see, in this particular case there have been attempts to terminate collective bargaining, unfair labour practices in terms of refusing to bargain, all of these things have been delays. In the meantime, while the delays are in progress, months that this is being investigated, there is nothing to stop the company from laying-off, etc., for example, the moment you petition in most of these plants, immediately that the election is to come off, the plant suddenly makes a reduction and you might say --- look, possibly business is bad --- but this is so invariably consistent that if you followed the practice of election after election you'll find that the same pattern comes out each time. Now, this is a method of intimidation.

THE CHAIRMAN: Would a safeguard be that the people entitled to vote, even though they had been dismissed from their employment after an application for certification had been made, if we were to recommend, say, that they would still be considered employees for the purpose of taking a vote even though no longer on the payroll. . . would that answer your problem?

I'm not saying that that might happen, I'm just trying to find out you feel about that?

MR. SWAITY: In terms of a person discharged, or in terms of the people laid-off because of. . .

THE CHAIRMAN: Well, for whatever reason.

MR. SWAITY: Well. . . will you repeat that?

THE CHAIRMAN: Well, you make an application for certification and after you've had a sufficient number of cards signed and a vote is ordered. . . from the time you make your application for certification with the signed cards, certain people who have signed cards would be laid-off. If we were to make a recommendation that even though they were laid-off, if they were on the staff at the time the application for certification was made that they would still be entitled to vote. . . would that answer your problem?

MR. SWAITY: This would improve the situation, Mr. Metzler, by the difference in time by the time the board ordered the vote as it varies from the time that you applied. . . is that correct. . . that would be the change in the law?

MR. METZLER: I'm not saying. . .

MR. SWAITY: No. I'm just trying to bring out how. . . what the change is from the present. At this point from the time the board orders a vote of the employees, or they have a vote even if they are not in the plant. . .

MR. METZLER: At the time the application is filed, lists are obtained and they ask for those lists to be checked, the union is entitled, in the course of the period between the time of application and the time of the hearing to file additional cards to build its case up if it so desires. It has that privilege, you see. At the same time the board is put in the position or feels that it is in the position where it must accede from anybody who may be opposed to the certification of the union, whatever element that it wants to put

before the board, whether it's in the nature of a petition or, as often is the case, you get a letter. . . I don't want to be represented by this union, yours truly. . . Joe Blow. . .--- that's all.

THE CHAIRMAN: Well, that situation, Mr. Metzler, that I am proposing to Mr. Swaity is this. . . that if an application is made for certification and cards are filed, countersigned and receipts given. . . after that a lay-off occurs for whatever reason it might be of certain employees who have signed cards. . . my suggestion is if those people, even though they were laid-off, if they were employees at the time the application was made, if they were to be permitted for the purposes of this Act to be allowed to vote. . . would that answer your problem?

MR. MACDONALD: Mr. Chairman, let me follow your point though. . . it doesn't necessarily resolve it because they may get certification and you may have a company like the one in St. Thomas which don't negotiate and then eight months later a petition comes in signed by. . . now, are you going to carry your proposition that far. . . signed by the majority of the people then in the plant saying that they don't want to have this union.

THE CHAIRMAN: Of course, I don't think the Labour Relations Board, or anybody, should consider any petition that comes in eight months afterwards, because if the petition is not received within a certain reasonable length of time from the time the application for certification is granted and the vote ordered, I don't think it should even be considered.

MR. MACDONALD: Well, I'm talking about de-certification.

MR. MORNINGSTAR: Well, Mr. Chairman, I think your suggestion would help a lot. These companies that wants to lay-off men just because they want to form a union at all is bound to exist.

MR. MACDONALD: Supposing for a moment, if you have a recalcitrant manager who is not going to sign the contract, like your joker in St. Thomas, this system is a pretty meaningless thing because you get your

certification, you don't get a contract. . . eight months later you got a proportion of the original working force there, and at that point some foreman gets a de-certification petition around. . .

THE CHAIRMAN: Well, if that bird exists, and he refuses to sit down and negotiate and doesn't answer your letters, I certainly think you have a remedy immediately. I think Mr. Metzler agrees. The minute this fellow procrastinates and says no, or doesn't even answer your letters --- I'd come immediately to Toronto --- immediately. I wouldn't wait for a month or anything else, when a reasonable length of time has elapsed and he refuses to even acknowledge your letter. . . I think then and there you have grounds for alleging that he is not bargaining in good faith, and I am quite sure that's the intent of the act.

MR. SWAITY: He would argue that the. . .

THE CHAIRMAN: He couldn't argue anyways if he doesn't acknowledge your letters and reply to your requests, which you say he didn't do.

MR. SWAITY: You see, the important thing is that what's happened in the period is that this will go. . . he will postpone the case and he will use postponements and drag this thing out. . . in the meantime he is whittling away at the people in the plant, and even if it resolves later and he is forced to bargain, you haven't got anything to bargain with and you have no longer got a union in the plant. . . that's the important thing.

THE CHAIRMAN: Well, I think you can rely upon it that we are going to do something about speeding up the processes under the Act where there will be certain time limits and they'll have to be observed unless something is postponed by the mutual consent of both parties.

MR. SWAITY: If there was some penalty on an employer who openly violates the Act. . . if the Board was constituted to have, as in the U.S. for example. . . the Board of Examiners do go out. . . if the

union files unfair labour practices against the company. . . the union doesn't have to prove its case. . . the Labour Board sends out examiners who go to the companies' plants and call on people at their homes, who interview, investigate and then the charges are formally laid by that investigator. Now, the Board will not go and investigate on just a phoney request. . . they normally will ask the union to give some evidence of violation, but once you have given enough to convince them that there seems to be something wrong here, the Board then follows through. And, because they are able to go into the plants and ask the company for its seniority records, its hiring records, ask the company for the slips which they may have had in regard to a person's previous employment. . . they can collect a great deal of evidence that's not open to us, and therefore, what I am trying to say is that we have a very difficult time to prove that the company violated the law because we have not got the access to this material, and this is the basic problem we face. Now, I think if the Board was permitted to do this, if the Board was so constituted to do this, this would be a tremendous help in terms of providing the employees with the right and freedom to joint a union.

THE CHAIRMAN: Well, following that, I would gather that it is also your contention that any prosecution should be by the Board rather than by the union.

MR. SWAITY: That's right. You see, in addition to that, you have to deal with that employer perhaps and if he's violated the law but you've won, you don't do anything about it even though he has been violating the law, because you've got to deal with him. . .

MR. MACDONALD: Let me ask you, perhaps this is just my own ignorance. . . in the American procedure, which I suspect you were referring to on Page 9, there on the end of that first paragraph, that the Board should be empowered to issue a cease and desist order. . . exactly how does that operate? What exactly does that mean. . . what sequence of

events are set in motion?

MR. SWAITY: Well, if for example, the person is laid off, the board will order him put back to work and if he had lost some pay he would be paid back his lost time. . . the employee would get paid for lost time. . .

MR. MACDONALD: No, you were referring here to the employer taking action by the way of sponsoring a petition against the application of the union. . . now, under those circumstances, what exactly would happen if our Board had the power to issue a cease and desist order?

MR. SWAITY: Well, if. . . in the United States. . . an employer is engaging in unfair labour practices the Board, after investigating . . . finding that the company has engaged in unfair practices, it would then post within the plant notices to the effect that this company has violated the Labour Code that workers have a right to join the union without intimidation, that this company has violated that law and that the company hereby, under oath, or whatever. . . I forget the way it's worded. . . will cease and desist from hereon and abide by the law. . . and these notices have to be placed everywhere, in every department in the plant so that the employees sort of are aware that the company has violated the law, and when election is held, these notices have to stay continuously on the wall until after the election or whatever period of time. This provides the employee with some knowledge that there is a law which is superior to management. In Canada, the company says. . . look, we can make our own law basically in regard to this and as long as we can get away with it . . . fine.

MR. PERKINS: Could I add there, Mr. MacDonald, that after the cease and desist order is issued then the Company is liable to prosecution in the court.

MR. SWAITY: That's right.

MR. MACDONALD: By the Board?

MR. SWAITY: By the Board.

THE CHAIRMAN: Is there anything further, gentlemen, you wish to direct to the delegation? Some of these submissions have been made to us on numerous occasions, Mr. Swaity. We want to thank you very much for your submission and you can be assured that it will receive our very careful consideration.

MR. SWAITY: Thank you very much.

THE CHAIRMAN: Gentlemen, it has been brought to my attention by the Secretary that the Industrial Relations Department of Cornell University has completed a very extensive study of ten years' operation of the Taft-Hartley Act. . . eight papers dealing with the various points of view of labour relations in the United States and published in book form. The price is \$1.50 each, and it is recommended that twenty copies be obtained for the use of the Committee. I will entertain a motion. Moved by Mr. Myers, seconded by Mr. MacDonald that we authorize the Secretary to order these books and to have them here just as quickly as possible. All in favour? Carried.

There's another document that Mr. Secretary has handed to me from The Ontario Municipal Electric Association, Secretary Treasurer D.P. Cliff. I think each one of you has been handed a copy of it and we want to make it part of the record. Will somebody move that it be incorporated in the record? Moved by Mr. Wren, seconded by Mr. Myers that this correspondence from Mr. Cliff be incorporated in the record of this Committee. All in favour? Carried.

Gentlemen, this Committee now stands adjourned until tomorrow morning at thirty minutes after ten o'clock.

ONTARIO MUNICIPAL ELECTRIC ASSN.
Secretary-Treasurer D. P. Cliff
63 Main Street. Dundas, Ontario.

March 15, 1958

Mr. H. Perkins, Secretary,
Select Committee on Labour Relations,
Parliament Buildings,
Toronto 5, Ontario.

Dear Mr. Perkins:

The following resolution was passed at the Annual Meeting of the Ontario Municipal Electric Association, held in the Royal York Hotel, Toronto, Ontario, on March 3rd - 5th, 1958.

"THAT as the Labour Relations Act affects Electrical Municipalities, the certification of a Bargaining Unit of Employees should be based on the result of a secret ballot and that such ballots be ordered only on a presentation of a sufficient number of membership cards."

Please be further advised that the above resolution was originally introduced at the Annual Meeting of District #5, OMEA held in Brantford on January 29th, 1958, where it also received endorsement.

It is respectfully requested that you place this resolution for the attention of your Select Committee on Labour Relations at the earliest convenient opportunity.

* * *

Dear Mr. Perkins:

This will acknowledge your letter of March 4th, with reference to a news item appearing in The Globe & Mail on the same date.

I presume the article referred to, had as its foundation the following resolution introduced at the annual meeting of the Ontario Municipal Electric Association, for discussion and action by the membership:

"THAT in the interest of public safety, all Hydro Public Utilities be declared essential industries, and that the Ontario Department of Labour be empowered, if requested by a Utility, to declare a no-strike or lock-out in the case of an unsettled Union Utility dispute, and further, that the no-strike or lock-out shall continue until a satisfactory settlement has been arranged through arbitration if necessary."

Please be advised that the members of our Association, consisting of elected and appointed Local Hydro Utility Commissioners from all across the Province, voted, almost unanimously, non-approval of the resolution.

It was the consensus of opinion that although Hydro is an essential operation and strikes arising within it could create definite hardship and hazard, nevertheless, the right to strike is a fundamental and constitutional right of our citizens and our Association should not take action which would interfere with those democratic rights.

Yours very truly,

(Sgd.) D.P. Cliff, Secretary.

END OF VOLUME NO. 38



ONTARIO
LEGISLATIVE ASSEMBLY.

THE PROCEEDINGS OF

THE SELECT COMMITTEE
ON
LABOUR RELATIONS

VOLUME NO. 39

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OFFICIAL REPORTER

W. J. BINKLEY
90 BINSARTH ROAD
TORONTO 5

DATE May 2nd, 1958

LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON LABOUR RELATIONS

Committee Room No. 2
Parliament Buildings
Queen's Park
Toronto, Ontario

FRIDAY,
May 2nd, 1958

MORNING SESSION

JAMES A. MALONEY

Chairman

HAROLD PERKINS

Secretary

GEORGE T. WALSH, Q.C.

Committee Counsel

MEMBERS:

G. E. Jackson
Donald C. MacDonald
Ellis P. Morningstar
Raymond M. Myers
Arthur J. Reaume
H. Leslie Rowntree
George C. Wardrope
Albert Wren
Hon. John Yaremko
Hon. Robert Macaulay

APPEARANCES:

MR. NORMAN L. MATHEWS, Q.C.
MR. ALLAN J. CLARK

PRESENTATION:

A BRIEF ON BEHALF OF THE FIRM OF MATHEWS, DINSDALE & CLARK

A BRIEF SUBMITTED BY MR. IAN S. JOHNSTON, Q.C.

(Read into the record by Mr. Norman L. Mathews, Q.C.)

THE CHAIRMAN: Gentlemen, I see a quorum. This morning we are going to have a presentation from Mr. Norman L. Mathews, Q.C., of Mathews, Dinsdale and Clark, and Mr. Mathews, I understand, you are also going to be kind enough to present the presentation of Mr. Ian Johnston, Q.C. You have associated with you Mr. Allan J. Clark.

MR. MATHEWS: He is a member of our firm.

THE CHAIRMAN: The procedure we follow, Mr. Mathews, is that the Brief is to be read to us and then you hold yourselves open to questioning on it. You may be seated to read the Brief and would you be kind enough to start.

MR. MATHEWS: Yes, thank you.

(MR. MATHEWS COMMENCES READING OF
BRIEF AND CONTINUES UNINTERRUPTED TO
PAGE 6 AT END OF INDENTED QUOTATION):

". . . or contribution to union funds is prohibited."

MR. MATHEWS: And, if I might just add at that point, Mr. Chairman and members of the Board, we are not suggesting that any individual could simply go to an employer, maybe because he doesn't want to join the union, go to an employer and say -- my religious beliefs forbid me doing it -- and to protect against that sort of thing, we have worded it this way. . . that not the people of these particular beliefs alone, but that the religious denomination or sect to which he belongs holds those beliefs and, in that case to get exemption I would suggest that it would be very possible to require not only his statement but a statement from some responsible person of his religious denomination.

MR. MYERS: Are there any such denominations?

MR. MATHEWS: Yes. As a matter of fact I know of different instances that have been brought to my attention, one as a member of the Bar Association and one in private practice. There are at least two that

I know of. . . I don't belong to either of them.

MR. MYERS: Some of them say that it is all right provided that the fees are applied for charitable purposes.

MR. MATHEWS: Yes, I believe that that practice is followed by the Seventh Day Adventists. But, there is another sect, a very old sect known as The Brethern, and under their religious beliefs they don't even have membership in a church. They have what they call an Association of Brethern, or something like that. But they won't even permit a member of their organization to join the Lion's Club or Rotary Club or anything of that kind.

MR. REAUME: Or to pay dues.

MR. MATHEWS: And they have very strong beliefs about it, and I know one man who was an employee for years in a clothing shop -- a clothing manufacturing shop -- in Guelph, I believe it was, and he belongs to The Brethern and a union came in, persuaded the employer to enter into a closed shop or union shop agreement -- this chap, under his religious beliefs couldn't join the union. The result is he was discharged and because of the fact that the union shop is pretty well prevalent in that type of industry, he wasn't able to get a job and he's been out of work for years.

MR. REAUME: I wonder how far this might. . . on that one point you would find some of the religions who might be in favor of their people joining a certain group of people, a union, and other unions would be out -- they might pass judgment on---oh, let's say, the automobile workers or the teamsters -- just saying that they are an -- outlaw.

MR. MATHEWS: Well, I don't know of any religious denomination that does that.

MR. REAUME: No. But, I said it could go that far.

MR. MATHEWS: Well, I wouldn't. . . I'm not recommending you go this far. . .

THE CHAIRMAN: I think Mr. Mathews is dealing only with

those religious denominations or sects whose beliefs prevent them and prohibit them from joining any association as such.

MR. MATHEWS: Any association, yes. . . not just a trade union. . . any secular organization.

MR. REAUME: Yes. The thing that I had in mind was that it might mean that it was the insertion of the thin edge of the wedge.

MR. MATHEWS: Well, I wouldn't think so because that is certainly a vast departure from what I am suggesting here. The only thing I am suggesting here is that a person should not be deprived of his job because of his religious beliefs, and it is purely and simply that.

MR. REAUME: What if he is paying his dues into the union provided those dues go for some other cause. . . a welfare cause?

MR. MATHEWS: As far as I'm concerned, Mr. Reaume, I can appreciate that those beliefs seem rather strange and maybe drastic, but the fact is . . . all I am saying is that I do know that those particular denominations do hold those beliefs, and their members . . . particularly in the case of The Brethern. . . and if they do hold those beliefs I don't think it is incumbent on any of us to say -- well, your beliefs are crazy and you can't do it. That's the whole purpose of the point that I am making.

MR. REAUME: Yes.

MR. MATHEWS: And, as I say, I am not suggesting that any individual could get up and say --- I'm a conscientious objector, or something of that kind. I don't mean that. But, if the whole religious denomination holds those views and he has to either lose his job or lose his religion, well, then, all I'm suggesting is that I think the. . .

MR. REAUME: The only thing about it, there are religions now and churches who are cropping up over night. . . a dime a dozen. . . and if the parson gets up and says -- now, brethern, we're opposed to the joining of unions and everybody puts up their hands, why that's final, I

suppose.

MR. MATHEWS: Well, no, I would think you'd have to have . . . I mean, there would have to be some face cards on that, and that's the reason I put it in. You notice I didn't put it. . . by reason of his religious beliefs, but if he's a member of a sect or denomination under whose belief. . . that is, under the belief of the denomination or sect. . .

THE CHAIRMAN: I think you've made that quite clear.

MR. MACDONALD: There is one aspect of this that bothers me a bit. There are an awful lot of people who are normally members of churches today and a person could conceivably, because he was against a union and didn't want to join, normally become a member of a sect which has this belief. Now, I recognize that in your proposal here you feel that you are meeting this by having a letter from that organization, too. But, it seems to me this organization is going to be on the spot. The head of any church is going to be in a pretty ticklish spot to say this man is not in reality an active member of my church, he only turns up once every four months. If he is nominally on the rolls, then all these facts come automatically because the minister would put himself in a pretty untenable position if he didn't supply the letter.

MR. MATHEWS: Generally the people who belong to these sects, denominations holding these beliefs are very, very faithful churchgoers.

MR. MYERS: Yes, I was going to say that.

MR. MATHEWS: Actually, as far as the Brethern are. . . I say, I have no association with the Brethern at all except that I have seen these matters often and I do know something about their beliefs, and as a matter of fact, I don't think you would find any more strictly conscientious group in the country than the Brethern. I mean, they are very, very strict about all sorts of things, and I don't think you would find that a person who is just a nominal member wouldn't be accepted into the Brethern at all.

MR. MACDONALD: I think you're right and I imagine the hypothetical one that would come into the category Mr. Reaume was talking about.

MR. MATHEWS: It is quite a natural one, and I quite agree with you. But the situation -- certainly in the ones I mentioned, there's no danger of that kind. And most of the churches will accept almost anybody into membership or put them on the rolls don't hold any particular views about that or about a lot of other things.

THE CHAIRMAN: Will you continue?

MR. MATHEWS: Yes.

(MR. MATHEWS RESUMES READING BRIEF
FOR THE NEXT SIX LINES OF THE NEXT PARAGRAPH):

". . . determining the result of a representation vote."

MR. MATHEWS: Now, that is something that I think the unions would subscribe to and, frankly, I think it's a fair provision.

THE CHAIRMAN: Well, we've had this presentation made to us in connection with this matter in several Briefs about eliminating the provision requiring fifty per cent of those eligible to vote. And this Committee has got that matter pretty well in hand.

MR. MATHEWS: Yes. Well, my suggestion was that even though they might be eligible, if they are not allowed to vote by reason of their religious beliefs, they shouldn't be counted as against the union -- they should be taken off and exempted as eligible votes.

THE CHAIRMAN: That's right.

(MR. MATHEWS RESUMES READING OF BRIEF
TO END OF PARAGRAPH WHICH ENDS NEAR
TOP OF PAGE 7):

". . . in a type of work for which he has been especially trained."

MR. MATHEWS: And, if I might just add to that for a moment something that has been brought to my attention since this Brief was prepared, and this is a somewhat important situation. But, there is a

trade union movement in Europe. It is quite strong, particularly in Holland. It is called, I think, the Christian Labour Association. And, they have, in the past few years established organizations in the United States and Canada, and in Canada they have a number of locals across Canada. They are, primarily, a Christian organization. They believe in christian principles, but they are also fully independent, they are not in any sense a company-dominated affair, in fact, they are quite the opposite. But, they are a trade union. They recently applied for certification in several places in Ontario. . . also in British Columbia. . . and, in both cases, their applications for certification were dismissed purely on the grounds that because they were a christian organization they couldn't qualify for trade unions. Now, the way the Act is framed that decision may be quite sound, but if there were a union of that kind, it seems rather an anomaly to state, in a so-called christian country, that these people, for instance, and others could join without violating their conscience or religious beliefs, can't operate as a trade union simply because it is trade union.

THE CHAIRMAN: How do you suggest that we should overcome that?

MR. MATHEWS: Well, I don't know, Mr. Chairman, quite frankly. As I say, that situation has arisen. . . they had a lawyer acting for them and when these cases came up. . . and on his advice they recently consulted me about it and I have advised them that under the present legislation they only thing they can do is to revise their constitution.

MR. MACDONALD: Well, Mr. Chairman, we've had a submission on that. . .

THE CHAIRMAN: Yes.

MR. MACDONALD: I've forgotten. . .

MR. MATHEWS: That may be. I didn't have anything to do with that. That was before I. . .

MR. MACDONALD: No. . . but I've forgotten whether they indicated that a person who doesn't hold their beliefs would be permitted to join their union.

MR. MATHEWS: Yes, that's quite true.

MR. MACDONALD: They would be?

MR. MATHEWS: Yes, as a matter of fact, that is made very clear . . . in fact, I have prepared a draft revision of their constitution and they had a convention recently in Hamilton at McMaster University and I was asked to attend it and give them some advice as regard to it. And, it was quite a large convention. They were here even from British Columbia. . . delegates. . . and they say over in Europe they have hundreds of thousands of members. . . very strong. But, in this particular case I pointed out to them that they would have to drop some of these provisions. One of the difficulties was that under their constitution as it was it provided that any person working. . . any workman who was below supervisory rank could be eligible to join the association provided he subscribed to their beliefs and aims. Well, one of their aims was that christian principles as taught in the Bible should be applied to economic, and social and industrial relations matters the same as to all parts of life.

MR. MACDONALD: What does that mean?

MR. MATHEWS: Well, I don't know that it mean't very much. For instance, there would certainly be nothing to stop any Protestant or any Catholic subscribing to that. There is nothing in there that would bar anybody like that. But, the question was raised at the previous hearing of the Board. . . well, what about a Mohammedan? Could he join? Say, he subscribed to christian principles.

MR. MACDONALD: You see, you've got a real basic problem here because at a time when not only the trade union movement has always stipulated that their members are enrolled without any regard to race,

colour or creed, but in addition to that at a time when we are moving legislatively toward eliminating considerations of race, colour and creed and where you may happen to live and renting of apartments, and so on, that a trade union should have emerged sort of going back and laying down this kind of restrictions.

MR. MATHEWS: Well, it's a real problem. That's true, and I figured the difficulty and tried to drive it in that way, but the difficulty is they, some of them, apparently hold very strong beliefs that they want to operate as a trade union, that's their prime purpose. . . but they also want to operate as a christian organization.

MR. MACDONALD: What was the ground the Board dismissed their application?

MR. MATHEWS: The Board dismissed it on the ground that a trade union can't exclude from membership any person because of creed, and at a previous hearing one of the officers of the union had made the statement that he didn't think they would accept a Mohammedan into membership. Now, that has been changed at the last convention and it was agreed that they would accept anyone into membership.

THE CHAIRMAN: Would this constitution you've drafted, Mr. Mathews, overcome the difficulty?

MR. MATHEWS: I believe it will.

THE CHAIRMAN: Are they prepared to abide by your advice in the matter?

MR. MATHEWS: I don't know. I spoke to the convention and they were having another address and it was in Hamilton and I had to get back here, so I left and I don't know what the final result was. I haven't heard yet. It was just a couple of weeks ago. But, the point is that it maybe. . . I mean, there's still reference to the word "christian" in it, but the position I take and advise them about and I would take before the Labour Relations Board is that as long as they are prepared to admit any person as a member merely be-

cause there may be something in the constitution that a Mohammedan might not agree with. . . if they are prepared to admit him, that's as far as they wish to go. And I think that is sound.

THE CHAIRMAN: Do you agree to that, Mr. Finkelman?

MR. FINKELMAN: Well, Mr. Chairman, I can't very well commit the Board, and I didn't hear everything that Mr. Mathews said, but I want to make it clear that the basis upon which the Board proceeded in the Boshin-Kenny case, and the Woodbridge Concrete Products case recently was that there was a commitment there by the member to observe christian doctrine in the doctrinal sense, not merely as the Golden Rule, or something of that sort, but it was a religious commitment, and that was the unanimous opinion of the Board in both cases. In the first case, in the Boshin-Kenny case, the Secretary-Treasurer of the organization stated specifically in reply to a question that a Mohammedan could not become a member. The second case, the Woodbridge Concrete Products case, in which the same organization was involved, they had by that time changed their constitution to some extent, that examining all the discussion at the convention, the Board felt that they had not made it clear in view of the initial statement, or rather the statement made in the initial case, in the Boshin-Kenny case, that they had really changed their policy at all. We asked for commitments on that score and we did not get commitments which satisfied us that their policies had been changed. That does not mean that if they change their constitution and admit people indiscriminately, without reference to race or creed, that the organization would not be a perfectly legitimate organization operating in Ontario.

MR. MATHEWS: Thank you. If I might say. . . I don't know whether Professor Finkelman heard the earlier part of my remarks, but I think you'll agree that I was not implying any criticism of the Board or the decision in that case. What I was suggesting was that because of that I had advised them to revise their constitution, and one thing they are definitely

prepared to do is to put a clause right in the constitution itself that any person who is an employee below supervisory rank regardless of creed is eligible to become a member of the union. . . although they would still keep the same name because it is a traditional name as far as they are concerned and exists all over Europe.

MR. MACDONALD: But, just a moment ago, Mr. Mathews, you said that a person coming in would not have to subscribe to everything in the constitution. Now, it seems to me that is. . .

THE CHAIRMAN: As far as religious doctrine is concerned. . .

MR. MATHEWS: No. . . as far as aims are concerned. . . they wouldn't have to subscribe to their aims. In fact, I suggested that what they call their basis. . . I had quite a lot of a sort of a battle with a number of the delegates over that. They thought, because this was the practice in Europe, that they must have a basis, and I pointed out to them that it was meaningless and that if they had aims and objectives, and so on, that that is all they needed.

MR. MACDONALD: Well, can a person join an organization in good faith without subscribing to its aims as laid down in the constitution?

THE CHAIRMAN: A lot of people join the C.C.F. that don't believe in it.

MR. MATHEWS: It seems to me that if a union permits or does not exclude anybody from membership that that's as far as it goes. Now there are many people. . . workers are required now, not just given the option but required to join unions. . . like some of these communist-led unions, and I'm quite sure they don't agree with some of the aims and objectives of some of these unions, but they have to do it.

MR. METZLER: Well, Mr. Chairman, I would like to make an observation. . . there was another instance where we have the same difficulty, and that was in connection with the extension of the Canadian-

(REPORTER'S NOTE: Page 3878 was missed in the numbering of pages but transcript continues in text on page 3879.)

Catholic Federation of Labour from the Province of Quebec into the Province of Ontario. In its original set up it required membership in the Roman Catholic faith as part of the obligation of membership. Well, then it came down into Ontario as it did around Ottawa, and the Board ruled against them in connection with one or two cases, but today they have straightened that situation out by dropping that requirement, and now anybody that wants to join the organization joins in this without any discrimination on any basis in respect of the. . .

THE CHAIRMAN: Well, the same situation would apply if Mr. Mathew's advice is accepted by these people.

MR. MATHEWS: If I might give you one rather amusing thing that happened at this convention. One of the delegates in answer to some of the advice I was giving. . . he wanted to have it kept the way that it was. . . and he pointed out. . . and he produced, I think it was either the U.A.W. or the teamsters' constitution, and at the very beginning there was a preamble in that that said something about --- that we believe that every worker is a God-created individual and therefore (you know) should receive the same consideration as everybody else -- and this chap says. . . well, now, what about that. . . an athiest wouldn't accept the idea that every person was God-created -- so, he said, -- if an athiest doesn't believe in God how can he subscribe to that constitution? I had a difficult time answering that one.

THE CHAIRMAN: Thank you, Mr. Mathews.

MR. MATHEWS: And, now if I might, beginning with Paragraph 6. . .

(MR.MATHEWS RESUMES READING BRIEF
TO END OF QUOTATION ON PAGE 10):

". . . the majority of the employees in the bargaining unit."

MR. MATHEWS: I might just point out in that case, that the purpose of that is that under the present situation it is patent that a union will come to an employer and say, you sign an agreement with us or

you don't get certain work, and you can't get certain work. . . you sign an agreement with us, a closed shop agreement, and then he says. . . we've got a number of unemployed members of our union and we don't want to accept any more members while they're not employed, so you must discharge all your present employees and take us. If this provision were in that sort of thing couldn't happen, because the union. . .

MR. MYERS: Has it actually happened?

MR. MATHEWS: Yes, it has happened. Now, that sort of thing couldn't happen if ~~such an~~ agreement could not be made by backdoor methods if the union first had to have at least more than fifty percent of the employees in the bargaining unit.

THE CHAIRMAN: Where did that happen?

MR. MATHEWS: Unfortunately, I can't give you the exact . . . the particulars of it now. . . Mr. Dinsdale, a member of our firm, is familiar with it, but he's been ill and I was hoping that he would be well enough to come here today, but unfortunately he's been ill since the first of March and he won't be in circulation for another couple of weeks.

THE CHAIRMAN: Do you know anything about it, Mr. Clark?

MR. CLARK: No. I've never had . . .

MR. MATHEWS: I know Mr. Dinsdale was referring to it, and I have. . . I do know. . . I do know, for instance, . . . I don't want to mention the name of the company, but I do know one case where a construction job of an apartment was going on and where the employer was told that unless he. . . that they wouldn't accept his employees into membership in the union, but they insisted that he sign a contract. . . as a matter of fact, there is not just one case where it happened. . . I do know of several. And, I might give you another case that just came to my attention this past summer. There was a general contractor who was constructing two projects in Toronto, quite large projects, and in the one case they. . . certain installation work. . .

I believe it was the form of the accoustic ceilings and that sort of thing, something along that line, was to be constructed. Now, this company had made a practice of. . . it had plasterers in its employ, that's the sub-contractor, it also had carpenters. . . its practice was that to try and divide up the work among the carpenters and the plasterers, they both said that this was their jurisdiction. . . and in the case of the one project in Toronto. . . they were both going on at the same time. . . in the case of the one project, this sub-contractor had his carpenters doing this work. . . members of the carpenters' union. . . the plasterers' union put up a picket line and said. . . this work must belong to us. . . and, all the work stopped. We had to, in order to get the work going again, we had to have recourse to an injunction, and thank goodness for that protection. . . because it was absolutely improper. . . they couldn't have gone on strike, but it was simply to force this sub-contractor to discharge his carpenters and to hire members of the plasterers' union in their place. . . and, strangely enough, at the same time in the other project where the plasterers were doing this work, the carpenters said -- this is our work, . . . and they set up a picket line there. Now, there you are. What's an employer going to do under those circumstances? And, that's one of the reasons that we say neither one would have been justified in going on strike. . . why should they be entitled to a picket line? And, as a matter of fact, we . . . actually, on that case, if it hadn't been for getting an injunction and removing the picket line, because the obvious purpose of the picket line was not to obtain and communicate information but to put an end to all work on the job.

MR. MACDONALD: Mr. Mathews, to get back to your original proposal here, though, do I understand that you have no objections to the closed shop as it exists in unions that have been established and certified for some time. . . your objection is to the group of unionists or a union using the requirements of a closed shop as a weapon to get certified in the first

instance.

MR. MATHEWS: No, no. . . no, they couldn't get certified in the first instance because they don't work as employees. The whole purpose, as I understand it, of the Labour Relations Act, and I think it's quite a proper purpose, is that employees of any given employer should have the right to select their own bargaining agent. . . select whatever union they want. Now, if that principle were carried out there wouldn't be the difficulties, but what happens is that instead of going to the Labour Relations Board, or instead of trying to organize the employees of an employer, the business agent of a union will walk into an employer and say --- look, we want you to sign an agreement with us. . .

MR. MACDONALD: Well, but just to bring back. . .

THE CHAIRMAN: Let Mr. Mathews continue.

MR. MACDONALD: No, but he's amended my question. . .

MR. MATHEWS: Either I don't understand his or he doesn't understand my. . .

MR. MACDONALD: You mean on Page 10?

MR. MATHEWS: Yes.

MR. MACDONALD: In your suggested amendments. . . "No provision for closed shop or union shop shall be included in any collective bargaining agreement with any union unless the union first shall have been certified by the Labour Relations Board. . . " Well, my question is this. . . if the union is certified by the Labour Relations Board, maybe it has been for years. . . then you have no objections to the requirements of the closed shop?

MR. MATHEWS: Not as far as legislation is concerned. . . no. . . subject to the other modifications I suggested earlier. The point is, what I'm trying to avoid is, and I think Professor Finkelman knows this has happened many times, that a visitation to a union who went to an employer. . .

it may be that not a single of the employees of that employer wants this particular union, but he will go to them and say -- look, we want you to sign a closed shop agreement with us. . .

MR. MACDONALD: As a first agreement.

MR. MATHEWS: As a first agreement, without even being certified, without representing any of the employees, and the employer says --- well, no, if my employees want you as their bargaining agent organize them and apply for certification. The business agent says -- oh, no, you sign an agreement with us or we'll put up a picket line on that job that your're doing and stop all work on the project. Now, the employer either has to suffer the loss, because generally the owner says -- oh, no, you mustn't have any trouble, we've got to get the building done by a certain date. . . you make peace with the union.

MR. MACDONALD: Well, what I wanted to get very clear was whether or not you are with some people who argue that closed shops should be eliminated completely, or whether you are just arguing that closed shops should be eliminated as a weapon in getting first certification.

MR. MATHEWS: Well, may I put it this way. . . that is what I am suggesting here. I think, as a matter of fact, if I might just go on to another part of the Brief I have dealt with that very point that you are asking, I think. But, the suggestion here is I am pointing out some of the particular abuses of union shop and closed shop provisions, and that, I think, is one of them.

MR. REAUME: Just a moment, either on Page 9 or 10, you mentioned something about a "backdoor agreements". I wonder if you would mind explaining what you meant?

MR. MATHEWS: Well, what I meant, Mr. Reaume, was exactly what I said a moment ago. . . where a visitation of the union rather than attempting to follow the procedure under the Labour Relations Act and

and obtain certification as bargaining agent. . . instead of doing that he short-circuits, and instead of trying to organize the employees as a union should do, he will go to the employer behind the backs of the employees and say -- look, I want you to make an agreement with me. . . under which all your employees will be forced to become members of our union.

MR. MYERS: Does that happen?

MR. MATHEWS: Oh, yes.

MR. REAUME: But I know of instances, too, where back-door agreements have been arranged. . .

MR. MATHEWS: By the employer?

MR. REAUME: Yes.

MR. MATHEWS: All right. That's just as bad. But this suggestion would eliminate both of them.

MR. MACDONALD: Well, Mr. Mathews, I don't want to be obtruse and ask an unfair question. . .

MR. MATHEWS: I don't mind a bit.

MR. MACDONALD: . . . but you appear to object to the basic principle of this. . . why then do you not object to the basic principles upon which the Law Association and the Medical Association are established?

MR. MATHEWS: Well. . . I can answer that. Because of this fact, that the Medical Association, or the Law Society, is not a bargaining agent in the first place. Unions are bargaining agents. And, as a matter of fact, the Law Society doesn't go to any client of mine and say -- look, we want to bargain on behalf of Mathews. . . you will pay him x dollars. . .

MR. MACDONALD: If you will recall what's happened in the last six or eight months you will find that the Ontario Medical Association is trying to fulfil the functions of and being the bargaining agents in conjunction with the hospital association for certain people within it.

THE CHAIRMAN: No. . . no. . .

MR. MATHEWS: I was not aware of that.

MR. MACDONALD: Your diagnostic people. . .

MR. MATHEWS: May I suggest this. . . the Ontario Medical Association, as far as I know. . . I'm not a doctor. . . but I understand that the Ontario Medical Association corresponds to the Canadian Bar Association . . . now, the Canadian Bar Association is an association of lawyers, but membership in it is voluntary, and there are a great many members, probably half the members, of the lawyers in Ontario belong to it. But, the Law Society of Upper Canada, which is the governing body is created by Statute.

THE CHAIRMAN: The same as the College of Physicians and Surgeons.

MR. MATHEWS: The same as the College of Physicians and Surgeons, and it is not a bargaining agent. And the only reason that the doing of certain things is restricted to lawyers is for the protection of the public.

MR. MACDONALD: Notwithstanding the protest of my friend to the right here, now that we have the situation where doctors are going to find themselves conceivably in the position of employees, the Medical Association is very actively trying to fulfil the role of bargaining agent.

MR. MATHEWS: And maybe it will be a bargaining agent.

THE CHAIRMAN: Oh, I think we can safely say that we'll never have State Medicine in this country.

MR. MATHEWS: But, nevertheless, I don't think membership in the Medical Association is compulsory.

THE CHAIRMAN: Why, the Ontario Medical Association has even placed a nominee of their association with the Ontario Hospital Services Commission, so don't talk nonsense.

MR. MATHEWS: Then, if I might continue. . . I think I am down to the bottom of Page 10, Paragraph 8. . . Mr. Chairman, and gentlemen. . .

(MR. MATHEWS RESUMES READING OF BRIEF
TO PAGE 13 AT END OF PARAGRAPH 9):

". . . the law than it would be where no such right exists."

MR. MATHEWS: And, I might say that applies even in Division Court where the case is under a hundred dollars, there is no right of appeal, and the judge can just do whatever the spirit moves him, but if it's over a hundred dollars and subject to appeal, even though there are very, very few appeals, probably not one per cent of the cases, you're more likely to have a judgment that is in accordance with the law.

(MR. MATHEWS RESUMES READING OF BRIEF
TO PAGE 14, LINE 7):

". . . gives a false and misleading impression to the public."

MR. MATHEWS: Now, if I might just give an instance of that . . . and, one case that I'm thinking of is the case of a large dairy, and a dairy is particularly vulnerable to a strike because if there are no deliveries then the householders are going to get it from some other dairy down the street. . . and, in this particular case the employees who were represented by a union, engaged in what, in our opinion at least, was definitely an unlawful strike, and the strike continued for several days. We immediately, on behalf of the dairy, applied for a declaration that the strike was unlawful. I might say the union and the employees were circulating propaganda to the effect that the strike wasn't a strike at all. . . wasn't an unlawful strike. . . and we felt that from the standpoint of public relations that it was very important that the facts be made clear so that the householders would know why these deliveries weren't being made, but by the time the matter was heard by the Board, the strike was over. . . the employees were back at work, and the Board issued a ruling that in view of the fact that the strike was over they would not make a declaration. Well, that of course, simply gave the union the opportunity of saying -- well, we told you, your company applied for a declaration that the strike was unlawful and the Board didn't give it to them,

so, obviously the strike was all right. . . Now, to our mind that's a principle, with great respect to the Board, is wrong. And, then, if I might continue on Page 14. . .

(MR. MATHEWS RESUMES READING THE BRIEF
TO LINE 16 OF PAGE 14):

". . . arising out of such unlawful strike or lock-out."

MR. MATHEWS: Now, I might mention just to be specific that the first of those statements, the courts have held that they should not on an interlocutory application make such a finding was a judgment of Chief Justice McRuer in a case of Hollinor versus Beatty. . . and, in other cases the courts have held that conversely that a declaration by the Board is of considerable importance in determining the legal rights of the parties. That was referred to in the Smith and Jones case.

(MR. MATHEWS RESUMES READING BRIEF TO
END OF PARAGRAPH 10 ON PAGE 15 - LINE 3):

". . . merely because the unlawful conduct has ceased."

PROF. FINKELMAN: Mr. Chairman, I wonder if I might interrupt at this stage because I'm afraid I have to take issue with Mr. Mathews on his interpretation of the attitude of the court. In the Hollinor case to which he refers there was an application for an interim injunction while a strike was in progress. If my memory serves me right, the sole basis upon which the applicants acceded in that case before the court was not that there was any violence or intimidation or nuisance, or anything of that sort upon which the court usually proceed in such cases, but simply that there was a strike contrary to the Act in violation of the Act, and that the picketing was in support of a strike of that sort, and Chief Justice McRuer did say in that case that on an interlocutory case of that nature, he did not propose to go into the question of whether the strike was contrary to the Act, that there was an agency authorized to make that decision and the parties should have applied to that agency for such a declaration. If that matter had come before us, and assuming that

the strike was unlawful, the declaration would have been made because the declaration, the application for the declaration would undoubtedly have been heard at a time when the strike was still current. If the strike was settled there would be no injunction, no application for an interim injunction in any event because it would serve no useful purpose. In the second to which Mr. Mathews refers, the Smith and Jones case, the Board did declare that the strike was unlawful, the matter then came before Mr. Justice McLennan, and Mr. Justice McLennan said that apparently the evidence before him was quite different from the evidence before the Board and he paid no attention to the declaration issued by the Board.

THE CHAIRMAN: Professor, if the situation arose where an application was made for such a declaration and the evidence is presented on which the Board would make a finding that there was an unlawful strike, even though the parties went back to work, would the Board still make such a declaration? That's the point here as I understand it.

PROF. FINKELMAN: The point is dealt with in the decision of the Ball Brothers' case which is reported in the material that I filed the other day. . . the policy of the Board is that if the parties have gone back to work before the application comes on for hearing, normally the declaration will not be issued. There are, however, two exceptions to that and they are set out in the Ball case in that material, and have issued declarations in cases where the strike has been settled before the hearing. But, that is not the general rule. The application for a declaration that a strike is unlawful has been used by the Board as a technique for inducing the employees to go back to work, and I think I can say without the fear of contradiction that it has worked very well. If you look at the statistics that we presented the other day I think you'll find that the vast majority of those cases are settled even before hearing. . . the Section has served a very useful purpose and has proved very effective and we have letters on file from solicitors, many solicitors throughout the

province testifying to that. We feel that if the Section were administered in another fashion it would not serve the purpose as useful as that.

MR. MATHEWS: Excuse me for this interruption, so Professor Finkelman will know the one I was referring to was the Silverwood Dairies case, and I would also point out that, if I might, reply very briefly to what Professor Finkelman has said, that in many cases it is quite true that the making of an application for a declaration has had the effect of bringing about cessation of the unlawful strike, and in such a case, in different cases, in which our firm has been associated, we have on the strength of that, asked that the application be withdrawn. Now, I think that is a different matter entirely. If leave of applicant is withdrawn by the party applying because of the fact that the strike has terminated, that is one thing, but I respectfully submit still that if for any reason such as in the Hollinor case, the application is proceeded with and it's important, in the view of the injured party, to have a declaration so that the situation will be clarified, then I respectfully submit that it should be granted. Now. . . just one other point, that Professor Finkelman referred to the Smith and Jones case, he refers to the justice of Mr. Justice McLennan at the trial at which he did not, and I quite agree with what Professor Finkelman has said, but Professor Finkelman overlooked, I think, the judgment to which I was referring was of Mr. Justice Wells on an interlocutory application for an injunction, and Mr. Justice Wells in his judgment used the fact that the Labour Relations Board had granted a declaration under Section 59 to support the giving of an injunction restraining the picketing before the trial.

PROF. FINKELMAN: But, that supports the very point that I made, that if in the Hollinor case there had been the application to the Board, the strike would still be in progress, the declaration would probably have been made and the court would have the declaration before it upon which to proceed if it wished to give weight to it.

MR. MYERS: I can't see, Professor Finkelman, the reason why the refusal of the Board to make an order would have the effect of making people who unlawfully struck, go back to work. . . why that would have a better effect on returning employees to work than it would be the case if the Board proceeded with the application.

THE CHAIRMAN: Well, the situation, Mr. Myers, is the employees have gone back to work.

MR. MYERS: Yes, I know, but Mr. Mathews said, why shouldn't the public know it. . . and, why shouldn't they?

THE CHAIRMAN: It was settled by mutual consent between the parties.

MR. MYERS: It wasn't settled because it was unlawful in the first place.

MR. MATHEWS: It is true that it wasn't settled. . . the union called it off, but it was still an issue as far as the public were concerned as to who was to blame in the first place.

MR. CLARK: A further example of that, Mr. Chairman, arose in a construction job where a number of. . . one of the trade unions had gone on strike. . . we immediately applied for a declaration that it was an unlawful strike. Shortly before the hearing -- this was last year -- we were approached by the union who stated that they were willing to notify their workers to go back to work providing we withdrew our application for the declaration. So, I spoke to the company about that and stated that that was the perfect solution to all of their difficulties, but the company pointed out that they might want to go against the owners for an extra on their contract along the lines that the strike was unlawful, it wasn't their fault, and they lost money and they should get additional money from the owners for it. And, if they did make that claim they would have wanted to use a declaration that the strike was unlawful in support of it. But, as it turned out, that wasn't necessary.

But , if I had had the instructions from my client to proceed with it, doubtless the union would have had their men go back to work and we would not have obtained the desired declaration.

THE CHAIRMAN: Would there be any objection, Professor Finkelman, if one of the parties in this case, naturally it would be the employer, insists that a decision be given. . . would the Board not accede to that request?

PROF. FINKELMAN: If it were the first instance in which a strike broke, there was no history of unlawful strikes in that area, the Board might well refuse to grant the declaration, if the employees had gone back to work.

MR. MYERS: Mr. Mathews, is the only purpose of proceedings with the application for the benefit of the . . . for informing the public?

MR. MATHEWS: That would normally be the case. It might affect future bargaining, because if, for instance, if a union can do that sort of thing and then you make an application for a declaration that it is unlawful, and the application is dismissed merely because the strike is terminated, then the next time that the union threatens to do the same thing you can't say --- well, this is what you did before -- and they can say -- oh, well, that wasn't unlawful, the Board wouldn't say it was. . . that's the difficulty that I see.

MR. REAUME: And, a very important one I think, and I want to ask you if you have any history on the very instance in Windsor where there was about three or four strikes where the union, or the organizer of the union was carrying around in his pockets charters of various unions and would drift from one that they didn't want. . . a certain union, why he'd give them another, or say a wholesale price on another one. Now, looking back on that case. . . Turrie is the one. . .

PROF. FINKELMAN: A declaration was issued in that case.

MR. REAUME: Which?

PROF. FINKELMAN: We did issue a declaration in that case. . .

MR. REAUME: Did you?

PROF. FINKELMAN: And it caused the employees to go back to work forthwith.

MR. REAUME: For a short period of time.

MR. MATHEWS: Yes, but the strike didn't terminate at the time that came up. . . that's why you got the declaration.

MR. REAUME: Well, I don't know. . . I was going to ask you the history of the case. It would seem to me that they would be no more out of one strike and that one was settled and they were into the other one, and I was just wondering if there was actually a declaration declared in that instance declaring that an illegal strike. . . that was the recent one, I suppose . . . the most recent one. . . but there were several just prior to that.

PROF. FINKELMAN: I don't recall any more than one application in that case, there was an application and there was a declaration made in that case.

MR. REAUME: The reason I ask the question is this that the organizer of the union or the business agent of the union, the fellow who was carrying around the various charters of various unions in his pockets, . . .

PROF. FINKELMAN: My recollection of that rather involved case, and I may be wrong in some of the details, was that the bargaining rights were held by the Retail-Wholesale union, the Provincial, whatever the local was, it was a provincial-wide local.

MR. REAUME: That was in the original instance.

PROF. FINKELMAN: That was in the original instance. . . then Tommy Reese, who had been an officer in Windsor of that local, persuaded the Retail-Wholesale to set up a separate local in Windsor, and I think the

number of that local, it was a local of the Retail-Wholesale, was Number 800.

MR. REAUME: That's correct.

PROF. FINKELMAN: And he applied for and obtained certification I think on behalf of local 800 displacing the province-wide local that had held the bargaining rights up to that time. They made an agreement, the local with the company, it carried on for some time and then Reese transferred his allegiance to the Brewery Workers.

MR. REAUME: That's right.

PROF. FINKELMAN: And persuaded the employees to go along with him. He may have been carrying charters around in his pocket, I don't know. The fact of the matter is that he did persuade the employees to switch to the Brewery Workers.

MR. REAUME: That's right.

PROF. FINKELMAN: There was an application to the Board for certification on behalf of the Brewery Workers, there was a vote, and the Brewery Workers local 800 won that vote. He then became the bargaining agent, and at some stage of the game, I don't know exactly when, he did -- or at least, a strike did take place, and there was an application for a declaration. . . there were several applications for leave to prosecute. The application for the declaration was heard expeditiously, as a matter of fact, taking into account the fact that it was a dairy, we sat on Friday and Saturday which we do not usually do, late into the evening, and a declaration was issued and the people were back to work on Monday. The strike was still in progress when the matter was heard.

MR. REAUME: I'm not finding any fault, of course, with the action of the Board, but the point that I do find fault with is this, that during the course of the time that he was organizing with the Retail-Wholesale, then later on with the Brewery Workers, carrying the charter around in his pocket and threatening all the time with a charter of the United Mine Workers, all

this business was going on and there wasn't only one strike, there were several strikes, and after it was all settled without ever declaring whether the strike was illegal or not, which in many instances would last for a day or two, . . .

PROF. FINKELMAN: There was no application, Mr. Reaume, went to our board except in one case. In the one case we received the application. . . and in the one case in which there was an application we dealt with it expeditiously, the declaration was made and the people went back to work.

MR. WREN: Well, Professor Finkelman, this would appear from what you just said, that a declaration that the strike was unlawful made by the Board was just as effective getting them back to work as this one. . . what's his name's. . . the effect would be that one would not be. . .

PROF. FINKELMAN: I'm afraid I don't understand your question.

MR. WREN: Well, you made a statement a little while ago with respect to the Section and the policy of the Board was that it would encourage the men to go back to work and there was some intimation that that the policy dictated that a declaration would not be in this case. . . it had just as good an effect in getting the men back to work by issuing the declaration that it was an unlawful strike.

PROF. FINKELMAN: I'm afraid I didn't make myself clear. Our feeling is that the effect of the declaration made while the strike is still in progress will be to induce the employees to go back to work and to induce the union to use every effort to get the employees back to work.

MR. WREN: But, the point I am trying to make here, just for information, this is not an opinion, but if the union knew in the case of strike and the employer knew in case of lock-outs that it would be the policy of the Board to resolve the matter one way or the other, would that not have the same effect of making them pay attention to what is lawful or unlawful?

PROF. FINKELMAN: Our opinion is that it would not have the same effect.

MR. REAUME: Well, I would be of the opinion, or rather the opposite opinion whether the application is made or not in the resolving of an illegal strike or a lock-out. I would make it known to the public that in your opinion this was an illegal strike, it involves the union and we hope it doesn't happen again. Because there are far too many illegal strikes, and lock-outs, too.

PROF. FINKELMAN: I'm afraid I have to take issue with that. The number of illegal strikes, the number of unlawful strikes rather, is comparatively small.

MR. REAUME: Well, I am just citing. . . I am trying to be reasonable about the thing because here is an instance with which I have had some experience. A number of illegal strikes, walk-outs, and things of that sort, were induced. . . and brought about by this one man who apparently had the membership in the palm of his hand so much so that he could deliver the entire group to a certain political party against or opposed, whichever way you wanted to do it. He kept his own books. He was his own auditor and at the convenient time, if he didn't find the books you couldn't find them, and things of that sort, but this condition went on and on and on, and there were many illegal strikes and walk-outs, but they were resolved because of the company who were anxious to get their milk bottles back on people's porches because, as has been explained, and properly explained, that in the event of a strike or trouble at a dairy, people don't wait for the strike to be resolved, they buy their milk elsewhere and consequently, after that is all over, they have lost a certain portion of their business and the company suffers. But, I'm only speaking about the one instance after a strike was finally resolved and the men went back to work, Mr. Reese ran about Windsor telling his membership --- Well, there was nothing wrong with it. We were perfectly

right in the actions that we took. Now, what I'm trying to find out, is there any way of putting a stop to a man such as Reese?

PROF. FINKELMAN: Well, Mr. Reaume, in the first place. . .

MR. REAUME: That's no damned joke.

THE CHAIRMAN: Order!

PROF. FINKELMAN: Under the Board's policy as set out in the Ball Brothers' case, if there were a series of strikes induced by one person or by the same union, or with the same employer, the declaration would be made notwithstanding the strike had been settled before the application came on for hearing. But, as far as Tommy Reese is concerned, even though the strike has been settled, assuming the fact to be as you suggested where there would have been a declaration in any event, even if the strike was settled.

MR. REAUME: I see.

THE CHAIRMAN: But, if these matters are not brought to the attention of the Board, the Board can do nothing about it.

PROF. FINKELMAN: Mr. Chairman, that is just the point, sir. The section has not been used as frequently as it might be used.

THE CHAIRMAN: Mr. Reaume should have brought that matter to the attention of the Labour Relations Board, I suggest.

PROF. FINKELMAN: Mr. Chairman, might I give you one other illustration of the sort of situation that comes before us. We've had occasion in which a grievance arose. . . some matter involving the attitude of a foreman toward his employees. A foreman is alleged to have gone to one of his employees in the hearing of others and -- this is a matter of record in the decision -- and told this man in the face of the other employees that he was a God-damned Pollack. . . you'll forgive my use of the language, but I am quoting. . .

MR. REAUME: Pollack, did you say?

THE CHAIRMAN: Yes.

PROF. FINKELMAN: He then approached another employee and kicked the stool out from under him. The employees went out on strike in that case because they couldn't get their grievances settled. Their complaint, they said, if they brought a grievance would be against the foreman and there would be no way of disciplining the foreman. When the case came on for us for a declaration that the strike was unlawful the representative of the employer who appeared before us, the personnel manager, said that he had heard the man had been called a Pollack, but he had not heard the "God damned Pollack" and the allegation that a stool had been kicked out from under a man. . . I should have said that the allegation of the union was that the stool had been kicked out from under a one-legged man. . . and the reply of the personnel manager was -- oh, I heard about the stool being kicked out, but not about him being a one-legged man. Now, the employees there went out on strike, and I leave it to the Committee to determine whether under those circumstances the Board should have granted a declaration.

THE CHAIRMAN: I should say not.

MR. MACDONALD: But that was an illegal strike.

PROF. FINKELMAN: That one was decided on the merits, Mr. Chairman.

THE CHAIRMAN: But, obviously, the facts as given by Professor Finkelman. . . the Board couldn't possibly in justice issue a declaration.

Mr. MATHEWS: The only point I am suggesting, that where the fact of an unlawful strike or lock-out are purely decided on their merits . . . the Board reviews the matter on the merits and issue a declaration one way or the other, and not just dismiss it on the only grounds that they have gone back to work ,

THE CHAIRMAN: All right, let's go on.

PROF. FINKELMAN: I am sorry, Mr. Chairman, for the interruption, but would you bear with me for just one further moment. We

have three types of decisions in cases of that sort. . . a declaration may be issued. . . no declaration may be issued and the case may be dismissed where the facts are along the lines suggested by Mr. Mathews, that it is the practice of the Board to say that no declaration will be issued and the case is not dismissed and the union cannot use that as the propaganda that the case has been dismissed.

THE CHAIRMAN: Let's proceed, Mr. Mathews.

(MR. MATHEWS RESUMES READING BRIEF TO
END OF PARAGRAPH 11 ON PAGE 16):

". . . are in favour of the change of bargaining agent."

MR. MATHEWS: Now, there was one case in particular, if you require information about it Mr. Clark has the file with him, where in a certain plant there had been two competing unions. One was a union chartered by the Trades and Labour Congress, which it was at that time, and the other was the U.A.W. They competed. There was a vote held and the federal local union received the majority of votes and was eventually certified.

MR. CLARK: Pardon me, it wasn't a vote held between the competing unions at that time.

MR. MATHEWS: Oh, I see. All right. There was a vote held . . . the two unions were competing for choice of bargaining agent. After an agreement had been made with the federal local union, apparently some of the officers of the federal union made some kind of an arrangement with the U.A.W. and a membership meeting was called. . . our instructions are that it was very badly attended. . . but, anyway, some kind of a resolution was passed that they switch their allegiance to the U.A.W. The U.A.W. applied for successor status under this and although there was an objection filed by a substantial number of employees in the plant, the certificate was issued under this Section and the employees then were represented by the U.A.W., the union that they had previously voted against. Now, it is our submission that if this recommendation were adopted that situation could not happen,

And before the Board should issue a declaration of successor status that they should be satisfied that at least the majority of the employees affected want that change made.

PROF. FINKELMAN: Mr. Chairman, I wish to take issue with the statement that the procedure is a mechanical procedure. . . I can't recall . . . can't place the case to which Mr. Mathews refers. . .

MR. MATHEWS: Canadian Fabricating Company, Stratford.

PROF. FINKELMAN: Oh. That was the federally chartered local union of the A. F. of L., or, at least, the C.L.C., at one time, and in the Merger Convention the arrangement was made that those locals should eventually all be transferred with the consent of the employees to the proper jurisdiction, the union which related to that particular type of operation. On an application for declaration of successor status the application was filed, the material was filed, notices are posted up in the plant and the employees are afforded an adequate opportunity to make representation to the Board, and if anyone objects an open hearing is held. There was a hearing undoubtedly held in the case if employees wrote in and filed letters of objection and weight was given to their objections, they were considered and it would depend upon the number of persons who objected. . . I can't recall the facts of this case. . . but every opportunity was given to them to register their objections. It's not merely a back-room deal as suggested in the Brief. There has to be evidence that the employees attended a meeting, that the meeting was properly called and the purpose of the meeting was made known to them, and that they approved the transfer and that the body receiving the group also approved receiving them. There is a very formal procedure and every opportunity is afforded the employees to make their views known to the Board, and the decision is then reached on the basis of all the evidence before it.

MR. MYERS: Must there be a merger or an amalgamation or merely an assignment of jurisdiction.

PROF. FINKELMAN: There has to be a merger or amalgamation or transfer of jurisdiction.

MR. MATHEWS: Well, this is a transfer of jurisdiction. In other words, what happens, and Professor Finkelman is right as far as he goes to the effect that the employees. . . there were certainly a substantial number of the employees in this plant objected to this transfer. . .

MR. MYERS: Well, why not cross out the word "transfer" . . .

MR. MATHEWS: . . . there were twenty-one. . . I can't give the number. . .

PROF. FINKELMAN: I can't give the number. . . but the letter that was sent in apparently was signed by twenty-one employees.

MR. MYERS: Mr. Mathews, I am inclined to agree with you. . . wouldn't the situation be met if you deleted the words "transfer jurisdiction"? Why, if there is a merger or amalgamation. . . why shouldn't the new union take over?

MR. MATHEWS: If it was a merger, yes, provided that merger took place with the approval of the membership.

MR. METZLER: Mr. Chairman, may I point out, the Trades and Labour Congress of Canada, which chartered and gave life to that particular local was passing out of existence. The organization would either go to a national or an international trade union as the arrangements have been made between the T.L.C., and the C.C.L., or it would die.

MR. MYERS: Well, wouldn't that be a merger?

MR. METZLER: No, it was a transfer of jurisdiction because the entity as a local was being sent over into the U.A.W., A.F. of L.-C.I.O.

MR. MATHEWS: Why shouldn't the employees have the right to decide whether they wanted to go over to the U.A.W. or didn't want to go over.

PROF. FINKELMAN: But they did.

MR. YAREMKO: Do I understand, Professor Finkelman, that notices were posted advising of the meeting. . .

PROF. FINKELMAN: The meeting had to be held in order to effect the transfer. If there had been no meeting. . . if there had been no resolution of the employees, there would have been no acceptance by the Board.

THE CHAIRMAN: You don't mean, Mr. Mathews, that an individual notice should be sent to every employee.

MR. MATHEWS: No. . . no, but to every member, I would say. I would say the members of the union who are going to be asked to vote a matter such as that, then I would say that there should be a notice sent to each employee. . . to each member of the union. . . your union is transferring jurisdiction to somebody else. . . and especially somebody else you've repeatedly voted against. Now, at least, you should find out that that membership meeting was attended by a majority of the members involved, but here in this case we don't know. . . there might have been only five or six members at that meeting, and they could still pass a resolution.

THE CHAIRMAN: In an election. . . in a general election. . . you don't get an individual notice that there's going to be an election.

MR. MATHEWS: I think you do.

THE CHAIRMAN: No you don't.

MR. MATHEWS: Enumerators go around and leave you. . .

THE CHAIRMAN: Yes, but that's a different matter entirely.

MR. MACDONALD: Mr. Mathews, quite about from the. . . the thing that disturbs me about your proposal. . . even if we were to accept the presentation of this specific case as accurate in every detail you've given us . . . to make the amendment that you suggested would completely frustrate the whole effort, or complicate and prolong the whole effort of the merger, and the decision of the merger convention was that they would get together. . .

and there were enough complications in it without making them go back and repeat the whole process of certification, which in effect is what you are asking for.

MR. MATHEWS: Yes, but isn't it a fact that as far as the merger is concerned, any merger resulting from the merger of the two main labour bodies has now been completed. . . it isn't necessary for that purpose. What I am particularly concerned about is what is called a transfer of jurisdiction and where one union. . . or, take in the case that Mr. Reaume was mentioning where one individual can probably go with a charter and say -- look, you are now going to belong to such-and-such a union. . . and they have a meeting of the membership and there may only be five or six at the meeting and they pass it, and a substantial number of the members of that union don't want to have their jurisdiction changed.

MR. MACDONALD: A substantial number were happy in all instances. . .

MR. MATHEWS: In which case?

MR. MACDONALD: In the one Mr. Reaume has indicated. I mean, he's deplored the fact that the majority of the employees were willing to consider in one instance one union, and later another union, and so on. . . that's what he's deploring.

MR. METZLER: Well, Mr. Mathews, under the present system it seems to me that the employees, the members of the unions have a double opportunity. . . they have the first opportunity of attending the meeting which is to be properly called on due notice of the agenda, and then it seems to me from, and we accept Professor Finkelman's statement, that they can subsequently, even having attended the meeting, appear before the Board and make their representations there a second time.

MR. MYERS: And, if that weren't done, you wouldn't consent to a mere assignment?

MR. METZLER: No, no. . . there's no question of mere assignment or a back-room deal. . . the employees have to be given an opportunity to express their opinion.

PROF. FINKELMAN: May I say, Mr. Chairman, that the merger developments have by no means run their course. As a matter of fact, they have just begun and are likely to go on for the next decade. There are talks of mergers between the Retail-Wholesale and the Teamsters, between the various textile workers' unions, between the chemical workers unions. . . there's likely to be dozens of mergers and amalgamations within the next decade. As far as transfers of jurisdiction are concerned there are still some coming before us at the present time. Not all federal locals have been assigned to their proper jurisdictions. The Canadian Labour Congress does not assign jurisdictions unless it is satisfied that the employees themselves want the transfer of jurisdiction in the first place. They make investigation apart altogether from anything we do, and before there is a transfer of jurisdiction assigned. . . before there is an assignment of jurisdiction. And that is still going on and there are some federal locals where the employees have not been prepared to go over to their respective jurisdictions and are still federal locals, and there are still federal locals being organized today who will, in due course, no doubt, be assigned to their proper jurisdictions. . . and special jurisdictions may have to be assigned and established for new unions which are likely to be created in the future.

MR. MATHEWS: Well, the point that Mr. Metzler was pointing out that if this union has not been transferred. . . the jurisdiction has not been transferred to the U.A.W., that ~~the~~ local would have been out of existence because the governing body seems to be. Now, that doesn't correspond with what Professor Finkelman said. . . there are still federal locals. You see, the only point we're making, Mr. Chairman and members of the Board, is this. . . that before they should be certified merely by seeing a copy of the

resolution alleged to have been passed at a union meeting that the number in attendance not known. . . if there was a substantial number of employees that objected, and did in this case, that the Board should be satisfied that the majority of the employees in the bargaining unit want the jurisdiction transferred from one union to another.

THE CHAIRMAN: I think you've made your point clear, Mr. Mathews.

MR. YAREMKO: I feel that this brings up a point that seems to be a concern of yours that a meeting may be called by an executive and a very poor attendance be present. . . to your knowledge has management ever undertaken an educational policy whereby they would tell their employees who are union members that it is right and proper and to their benefit to be active within the unit. . . union. . . and take full participation?

MR. MATHEWS: Yes. Very frequently. As a matter of fact, I know of one company for whom I act, a fairly large company, and they have a clause right in their collective bargaining agreement that in order . . . that they want the members to attend. . . members of the union to attend as far as possible all union meetings, and they have even given some inducement right in the collective bargaining agreement to have members attend. . . I think they have even given them a place where they can hold elections right in the plant as inducement for them to attend. And that, incidentally, is not in any sense a company union. . . as a matter of fact, I can tell you the name of the union . . . it's a very prominent union, particularly in the States. . . American Federation of Grain Loaders.

THE CHAIRMAN: Thank you, Mr. Mathews. Will you proceed with Paragraph 12.

(MR. MATHEWS RESUMES READING OF BRIEF
TO END OF PARAGRAPH 12 ON PAGE 17):

". . . rather than the servant of the employees."

MR. MATHEWS: Now, if I might just say in regard to that . . .

that may be stated a bit too baldly. I can appreciate the purpose of the amendment was that where an employer after certification has been guilty of unfair labour practices and has discharged certain employees or discriminated against them and made it impossible for the union to persuade any of the employees to serve on a bargaining committee, then I think if an employer has done that sort of thing that he is entirely in the wrong and that that protection may be needed. But, on the other hand, what I'm afraid of is that it opens the door to what happens in many cases that the trade union's only representatives are the business agent or the international representative, as as far as the employees are concerned, they're left out in the cold. Now, if I might give one illustration where this situation has happened, and I have not made a practice in any sense of criticizing the Ontario Labour Relations Board. . . but this particular instance illustrates the difficulty. There is one company that has a plant in Ontario. . . it has an agreement with the International Association of Machinists. . . they manufacture a product which in turn is installed in many buildings throughout Canada. They have a number of their own employees that do this installation work. . . go around the country doing it. . . but, in certain places, in certain types of installation, they require the services of carpenters. And this particular company, and they have had very good relations with their union, incidentally, they. . . when they go to a certain center where there's a carpenters' union local, they will call the union office and hire maybe four carpenters, or a half a dozen, or whatever they need, for the duration of the job. . . which usually lasts for maybe one or two weeks. And that has been going on for years. But, this particular time they had a job to do in Windsor and they called the union office, they hired these carpenters. . . it was quite obvious that it was only for a very short term. . . but the union then took advantage of that fact and promptly filed an application for certification for all the carpenters employed by this company in the County of Essex. The company, in its reply, gave the names as it was

required to do of the carpenters that it had in its employ, who were all hired locally, and said -- but, this work will be terminating in about three days' time and we won't have any carpenters in our employ -- in other words, there will be no bargaining unit. At the time the hearing came up before the Labour Relations Board the job was all finished, the company had no employees in the County of Essex whatever, there was no bargaining unit. In spite of that. . . and in spite of our objections the Board did certify the carpenters' union as the bargaining agent for our employees who were non-existent.

MR. MYERS: Why did they do that?

MR. MATHEWS: That was one of the decisions of the Board that I have found it. . . Professor Finkelman was not on that case. . . it's one that I find extremely difficult. But, now, here's the point, the implications arising from it. . . what are we to do? Certainly it was no fault of the company that the employees didn't have a bargaining agent, it was that there couldn't be employees in the bargaining committee because there weren't any employees. So the union then comes along and wants a meeting. We arranged the meeting and, of course, the union has no employees in the bargaining unit. . . because there aren't any employees. . . through no fault of ours. The union is represented by an international representative and a business agent, both in Toronto. So, what did the union do then? It was a local in Windsor that was certified as the bargaining agent. . . so they want to negotiate. . . and, do you know what they do? They present to us a contract of the international union, not the local at all, covering all carpenters employed by the company throughout the whole province, not just Essex. . . throughout the whole province and this agreement is made with some employers' association of which we are not a member, and it's a closed shop agreement, and all they say is -- we want you to sign that. And, I say -- is it subject to negotiation? Oh, no, we can't change it because that's already been signed by the association.

MR. MYERS: What has happened?

MR. MATHEWS: Nothing has happened so far.

MR. MACDONALD: That may be the only way they can get the carpenters that this company will be hiring on an industrial basis at succeeding times across the province.

MR. MATHEWS: I don't know. But all I'm saying is that the employees should have the right to select their bargaining agent in other parts of Ontario. It isn't up to the union to say that. But, the point I am making is that that is an indication, coming under this very clause, now. . . would that union be entitled to conciliation? If they made an application for conciliation? They certainly wouldn't be under this Section. We are under no obligation to meet them unless they have a committee of employees, and why should they? But, under this clause, conceivably the Board could grant them conciliation. And, with great respect, I think that points out the weakness of a position where the Labour Relations Board will certify when there are no employees in the Bargaining Unit at the time of the hearing and there is no evidence that there is any prospect that there ever will be again.

THE CHAIRMAN: Do you know anything about that, Professor?

PROF. FINKELMAN: Mr. Chairman, I don't know the specific case. I'm trying to believe from what Mr. Mathews has said. . . I don't know what his reference is to my not sitting on the Board whether Mr. Reese. . .

MR. MATHEWS: That's true, you were not sitting on that particular Board, Professor.

PROF. FINKELMAN: Mr. Reese was sitting on it. Well, the decision, I am quite sure, would have been exactly the same if I had been sitting because there is not a question of two Boards. . . there is one Board and the policy is the policy of the Board at all times, and one panel would not reach a decision other than what another panel would reach. We make sure that we maintain uniformity, and I don't know the exact facts of the case. I would say that we take the date of the application as the date which governs the

proceedings, not what happens afterwards, because if we went beyond the date of the application we would be in a mess all the way through. . . it's a story which I'm afraid takes too long to explain at this point. . . I'm quite prepared to come back and go into that problem, and particularly so in the construction trades where that policy is the only one which we can follow if we are to render any service to the construction industry. If the facts are as Mr. Mathews has given them, there would normally be a project application, a project certification. . . a certification confined to that particular project.

MR. MATHEWS: This was not.

PROF. FINKELMAN: If it was a certification for an area, then that employer must have been in that area off and on for some time, because that is the Board's policy. On the question of the negotiations, the union demanding that the employer sign an agreement covering the whole province, that of course is something over which we have no control and the employer is at liberty to refuse to bargain on that basis. We can't control that and no matter how we would certify it would not affect the issue one iota. But, as far as Section 13 is concerned, the purpose of Sub-section 1 (a) of Section 13, is something entirely different than that suggested by Mr. Mathews. We have had many cases in the past in which an employer and the officials of the trade union sat down and negotiated for some considerable length of time, sometimes there wasn't even a formal notice, written notice of desire to bargain. . . they spent weeks negotiating, weeks in deadlock on one issue where the union decided to go to conciliation and then the employer said -- ah, but you didn't serve us written notice, you didn't have a committee with you. . . all that has gone before is washed out, you better start over again. And the purpose of Sub-section 1 (a) was merely to cure that situation. If the employer comes into a situation of that sort and says --- you haven't got a committee, we won't meet --- that's the end of the situation. He doesn't have to hold the meeting. And, if he says -- all right, let's see if we can sit down and do something but with-

out prejudice to our rights. . . we're not surrendering our rights. Then, if later on they come to a deadlock he hasn't lost any of his rights, but if the employer sits down and bargains and doesn't demand the attendance of a committee and then raises the issue two or three months later, then we say -- he should n't lead the union down the garden path and then say -- you can't get conciliation, you have to serve notice and start bargaining all over again and perhaps it may be too late for the renewal of an agreement.

THE CHAIRMAN: That's as I recall it from experience.

Will you proceed with Paragraph 13, Mr. Mathews?

(MR. MATHEWS RESUMES READING OF BRIEF
TO END OF INDENTED PORTION ON PAGE 17):

". . . whichever is later."

MR. MYERS: What if (i) were called "a", and what if (ii) were called "b-1", and what if (iii) were called "b-2" then that would. . .

MR. MATHEWS: Well, I would say this, Mr. Myers, that any. . . as I go on here. . . what we're objecting to is the thing whichever is the later. If it's alternatively I have no quarrel with those three. . . if one of those three things have happened. But, the words, "whichever is later", and it doesn't apply in the case where you are negotiating under Section 10 for a first agreement.

(MR. MATHEWS RESUMES READING BRIEF TO
END OF PARAGRAPH 13 ON PAGE 18):

". . . be deleted from this sub-section."

PROF. FINKELMAN: Mr. Chairman, there again I must take issue with Mr. Mathews. I hope you will forgive me for these Brief interruptions, Mr. Chairman. The purpose of Section 44 is to put a union which is renewing an agreement in the same position as a union which is initially certified. The union which is initially certified gets a twelve month minimum of protection. If we didn't have Section 44 in the Act it would mean that a union which had had an agreement in the past would have less protection than

a union which was initially certified. Section 44 is put in just to put the two of them in the same position, and nothing more.

THE CHAIRMAN: Continue with Paragraph 14, please.

MR. MATHEWS: I am not going to attempt to reply all, because it would simply take too long, but . . .

THE CHAIRMAN: Well, we've been in here two hours now.

MR. MATHEWS: Well, I haven't been taking all the time.

THE CHAIRMAN: No, I quite appreciate that.

(MR. MATHEWS RESUMES READING OF BRIEF TO THE END).

PROF. FINKELMAN: Mr. Chairman, I must apologize for interrupting again. . . I will state dogmatically here and I will ask for very strict proof that we ever included in a bargaining unit the foreman who had authority to hire or discharge. That has never been done to my knowledge. . . . either during the period that I was with the Board from '44 to '47, or since I returned to the Board in '53. . . in construction industry we draw a distinction between working and non-working foremen, and those of you who know anything about the construction industry know that the non-working foreman is a supervisory person. . . the working foreman is usually a straw-boss, and in general in the construction industry the working foreman has little authority. He never has authority to. . . well, I shouldn't say never. . . but the working foremen we have included in bargaining units have not the power to hire and fire, and the distinction is always on that basis. If the company, the employer establishes to our satisfaction that the working foreman can hire and fire, he will not be included in the bargaining unit. And I can establish to your satisfaction cases in the construction industry in which foremen, as such, have been excluded, even though they were working foremen. It's always a question on the evidence as to what the working foreman does. . . has he managerial authority or has he no managerial authority. . . and certainly if he has power to hire and fire, then he will be out of the

bargaining unit.

MR. YAREMKO: There is a thing. . . what would be the objection then to referring to that specifically within the definition?

PROF. FINKELMAN: I have no objection to that being included as far as in my personal capacity, but I don't see that it serves any useful purpose because it's going to establish, I'm afraid, a criterion which will lower the level of management. . . which will make the level of management which will be included in the bargaining unit persons only who have the authority to hire and fire, that was the tendency over a period of time. . . that that will be the dividing line. . . the authority to hire and fire, and there are very few foremen in industry today who have authority to hire and fire. In fact, I think Mr. Mathews amendment would put into bargaining units a great many people who are now regarded as being management and are excluded from the bargaining unit.

THE CHAIRMAN: Thank you very much, Professor.

MR. MATHEWS: Mr. Chairman, may I just say a word in reply to that? We are not suggesting that only people who have authority to hire and fire be excluded from the bargaining unit. If Professor Finkelman is correct in his statements, then all I can say is that I thought I was very familiar with the practice of the Board in this matter. . . I think Professor Finkelman will find that there are many cases in which, especially in the carpenters' union, the sheet metal workers' union and various unions of that type in the construction industry, where the evidence has shown that the foreman is the only representative of the company on the job. . . he goes up to North Bay, or something, and he hires carpenters up there and he fixes their wages, hires them, fires them, lays them off, does everything about it, and is still included in the bargaining unit simply because he doesn't work.

PROF. FINKELMAN: On the basis of certification or on the basis of agreement?

MR. MATHEWS: No. . . on the basis of certification.

PROF. FINKELMAN: Well, then, you failed to establish to the satisfaction of the Board in those cases that the foreman did have the authority to hire and fire.

MR. MATHEWS: Well, that is one thing that I have always found very hard to establish, but if that is the practice of the Board I'm very happy to hear about it, because that has been causing us a great deal of trouble in a great many cases.

THE CHAIRMAN: Thank you very much.

MR. MATHEWS: Now, Mr. Chairman, I have been asked, and I don't know whether you wish to do it at this stage or not. . . I did not prepare it but I am familiar with it, but Mr. Ian Johnston was to present a Brief today and I have been asked by him, and I believe he asked Mr. Perkins if he would ask me to read his Brief.

THE CHAIRMAN: Well, if it is only a question of reading it, Mr. Mathews, I think we can read it ourselves and save you any inconvenience and time.

MR. MATHEWS: You'll not save me any inconvenience. It is a very important matter and I thought maybe when Professor Finkelman was here ~~that~~ you might like to deal with it. But, I don't want to take up the time of the Board, or the Committee. . . but, I am in your hands in the matter. I am prepared to read it and support it. . . and I'm prepared to. . .

THE CHAIRMAN: You go ahead then.

MR. MATHEWS: But, I don't want to do . . .

THE CHAIRMAN: I have a little concern for some of the members have to catch trains, and we want to hear Mr. Osler who has been waiting here for quite a while. Well, you go right through the Brief, and if then we want to question you, why we will.

PRESENTATION:

A BRIEF SUBMITTED BY MR. IAN S. JOHNSTON, Q.C. AND READ
BY MR. NORMAN L. MATHEWS, Q.C.

(MR. MATHEWS READ BRIEF THROUGHOUT)

MR. MATHEWS: Thank you very much, Mr. Chairman.

THE CHAIRMAN: Any questions? Professor Finkelman,
please.

PROF. FINKELMAN: There are hundreds of international unions under the international name who have been certified and who have collective agreements within Ontario and that has been the situation since 1944. This issue was first raised in 1944 in a case. . . in fact, the very first case in which a written decision was issued by the Board was one involving this very point, and the decision arrived at was that an international union was entitled to certification under the legislation, it was entitled to operate in Ontario. The Bolton case is distinguishable. If you look at the facts of the Bolton case I am sure that you will see that they do not indicate in anyway nor was it the intention of the Board in the Bolton case to deprive international unions of the status that they had enjoyed up to that time. The reason for the amendment was a very simple one. A good deal of time had been spent by people before the Board arguing that an international trade union could not be certified, and there was an action taken to the courts in one instance to upset a decision of the Board and it was found that an international union had been certified. In order to clarify the situation and preserve the rights of international unions that had bargaining rights in the province the Section was changed and the law has not been changed from 1944 in any sense at all. The Bolton case is still good law as far as it goes.

THE CHAIRMAN: Thank you, Professor. Any further questions, gentlemen?

MR. MYERS: Well, there's only this, Mr. Chairman. . .

I would like to ask Mr. Mathews a lot of questions about subjects that were not included in the Brief.

THE CHAIRMAN: Well, I don't think we should, Mr. Myers.

If they are not in the brief. . . that's all we want to concern ourselves with.

MR. MYERS: No. . . he said that he concurred with other recommendations without saying what they were.

MR. MATHEWS: As a matter of fact, Mr. Chairman, I would like to say this, that I wanted to deal with another matter, but I am not going to ask you to do it now. I realize you are cramped for time.

THE CHAIRMAN: If you want to come back to us, Mr. Mathews, we're going to sit starting on the 13th of May again. If you feel you ~~have~~ the time, we would be very glad to hear you.

MR. MYERS: Yes.

MR. MATHEWS: Well, Mr. Chairman, I can assure you I'd be very happy to do. . . I don't want to take up a lot of time, but in reading over some of the Briefs that have been submitted, there are some matters dealt with, including one in particular. . . the matter of injunction, that I feel there should be some reply to. . .

MR. MYERS: The matter of which?

MR. MATHEWS: Injunctions.

THE CHAIRMAN: There have been replies to it, but we would be glad to hear you.

MR. MATHEWS: Well, I think I have had more experience with injunctions than anybody in Ontario.

THE CHAIRMAN: Well, you come back. Arrange with the Secretary sometime.

MR. MATHEWS: If you want me to do that, only I don't want to impose myself. . .

THE CHAIRMAN: You wont be imposing.

MR. MATHEWS: I appreciate the opportunity of appearing
before you. Mr. Myers, if you want me to come back, ask Mr. Perkins and
I'll be very happy to do so.

MR. WREN: Please do.

MR. MATHEWS: Thank you, Mr. Wren.

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ONTARIO
LEGISLATIVE ASSEMBLY.

THE PROCEEDINGS OF

THE SELECT COMMITTEE
ON
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W. J. BINKLEY
90 BINSARTH ROAD
TORONTO 5

LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON LABOUR RELATIONSFRIDAY,
May 2nd, 1958

MORNING SESSION (continued)

JAMES A. MALONEY

Chairman

HAROLD PERKINS

Secretary

GEORGE T. WALSH, Q.C.

Committee Counsel

MEMBERS:

G. E. Jackson
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Ellis P. Morningstar
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H. Leslie Rowntree
George C. Wardrope
Albert Wren
Hon. John Yaremko
Hon. Robert MacaulayAPPEARANCES:

MR. J. H. OSLER, Q.C.

PRESENTATION:A MEMORANDUM OF SUGGESTIONS REGARDING THE LABOUR RELATIONS
ACT

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MR. J. H. OSLER, Q.C.

PRESENTATION:

A MEMORANDUM OF SUGGESTIONS REGARDING THE LABOUR RELATIONS
ACT

THE CHAIRMAN: Gentlemen, we are now to have a Memorandum of Suggestions Regarding the Labour Relations Act submitted by Mr. J. H. Osler, Q.C.

MR. OSLER: Mr. Chairman, I would like to say at the outset that I appreciate the opportunity to come before your Committee and I do regret very deeply the fact that I found myself unable to prepare a full Brief on the subject that I wish to discuss. I have no excuse to offer except that this thing is constantly developing and as I went along I found there were more and more things I wanted to put in a Brief with the result that I finally didn't get a full Brief prepared at all. So, I would ask your indulgence in permitting me to submit today merely a memorandum of subject headings which I hope you will permit me to discuss with members of the Committee. Basically, the ideas I have attempted to set out are the result of a good many years of practice in Labour Relations. . . etc.

Now, if you would permit me, sir, I undertake not to take more than a very few minutes. . . there are three matters which are related to things I have said in my Brief that arose this morning, Mr. Mathews and Professor Finkelman both discussing them. . . if you permit me to take five minutes to deal with those first and return to my principal Brief, I would appreciate it.

First of all is the declaration of unlawful strikes. The only comment I would like to make on that is this. . . the Chairman has indicated, and the

cases certainly bear him out, that as a general rule the Board's policy is to refrain from issuing a declaration once the issue has been resolved, in the sense that the men have gone back to work. Now, it does occur to me and I think that it has worked out this way in practice, that the utility of the declaration could largely be lost if it were made known that a declaration was going to be issued every time it was applied for when there was an unlawful strike. Putting it another way around, this doesn't always happen, but very frequently a strike starts in a more or less spontaneous manner in the plant. One of the things that responsible union officials can do, and certainly one of the things that counsel advising them can do is to make it plain to those people that their conduct does subject them to this declaration, and on a great many occasions I have said to people -- now, it's up to you, it's a matter of policy, but I can tell you that if this continues more than another few hours, you're going to be faced with a declaration. Now, that is something they frequently don't appreciate, that they don't realize when the thing starts. And they say -- well, if it's as serious as all that, I think we'd better give it a second thought. . .

MR. MYERS: What does the declaration mean in the case of. . .

MR. OSLER: It means that it is clearly established by a body set up to do so that their conduct is unlawful, and if they appreciate that somebody is in a position to say authoritatively that that conduct is unlawful, very often it has caused people to reconsider.

MR. MYERS: There isn't any penalty attached to it?

MR. OSLER: There is no penalty per se, no. It may strengthen the hand of anybody applying for an injunction or possibly for damages subsequently. But, if you have to say to those people -- it doesn't make any difference whether you go back to work or not there is still going to be a declaration -- then, I say, in one sense the utility of that declaration might be lost. That's one reason why I feel that the Board's policy has been

a sound one in that respect. Then, sir, something was said about, or objections made to some of the policies on applications for declarations of successor status. May I say this, that I have been concerned with a good many, probably fifteen or twenty applications of that kind before the Board, and for what it is worth I can tell you very definitely that the Board takes very great pains to ascertain first that the purpose of the meeting at which a merger or transfer is going to be discussed is made known to the employees, second that full and adequate notice is given. . . I mean, if word is passed around the plant twenty-four the meeting the Board wont consider that for a moment. They will, sometimes, accept notices handed out at the plant gate some days ahead, they will usually accept notices posted on the notice board, but they do make most careful enquiries into that question, and they require an exact piece of evidence regarding the number of persons who attended so that they are in a position to know what portion of the members have had this thing under consideration. The evil suggested by Mr. Mathews this morning, in my experience, can't arise before the Board because they do take the utmost care to make sure that the meeting is properly called, the number of people that were there and voted in favour of the resolution. Then, the only other point arising out of this morning's proceedings that I wanted to comment on was the question of the bargaining committee. . . I think, sir, that your Committee will find looking at the legislation, that prima facie, there must be a committee which contains employees. Now, it is up to anybody coming before the Board for conciliation services in the absence of a proper committee to establish to the Board why those services should be granted. The legislation reads, in the first instance. . . there must be a bargaining committee composed of employees. An exception has now been placed in the legislation partly because there were a few cases of great hardship where there were tyrannical employers in small plants, and it did prove impossible to maintain a bargaining committee. Those don't arise often, but they do arise, they have arisen. That's one

reason why in my suggestions, in my submission, that discretion must be vested in the Board to grant conciliation services even if the Committee may not have been technically constituted from employees. Now, sir, I will revert to my main Brief, if I may.

The first subject I've set out there is the general question of Enforcement of some of the requirements of the Act, and of those my first sub-heading is the Commissioner Cases where someone is appointed to enquire into an allegation of an unjust discharge or an unlawful discharge under the Act. Today, as you know from your study of the Act, such an application is made to the Minister and he acts in a more or less ad hoc method. He appoints a conciliation officer to try and work out a settlement and I would say in the great majority of cases those things are settled in that way. . . conciliation officers do an excellent job on many of those cases. If they don't succeed, a commissioner is then appointed and he is almost invariably a County Court Judge, most of whom, of course, are very well fitted for that kind of job, but in some cases particularly in areas where there has been very little experience in labour relations the County Court Judge may not be at all familiar with the Act, may not be at all familiar with industrial relations practice and may find it a difficult matter to decide. Also, he has no guidance as to what other people have done. He has got no sort of rule to go by, so that you get a great variety of results from roughly the same set of circumstances because they are all ad hoc commissions. Now, what I would propose to your Committee, sir, is, at the risk of loading even more a heavily burdened Board, I'm afraid that can't be avoided. . . perhaps the Board will have to be enlarged, I don't know. . . but, I would suggest that applications alleging an unlawful discharge should be made to the Labour Relations Board rather than to the Minister. Second, the Board could then make use of the existing conciliation service and could assign a conciliation officer, as at present, to investigate and try to effect a settlement. If he should not succeed in effecting

a settlement he could then furnish a report in writing to the Board setting out his view of the facts and what had occurred. That might be sufficient to end the matter. If neither party objected to his report within a set period of time the Board itself could take whatever action it considered necessary and that could include dismissal of the complaint or an order for reinstatement with or without an order for payment of compensation for time lost through the employer's improper act. Now, in a few cases a party, one party or the other, would not be satisfied with the conciliation officer's report, he could make a formal objection to the Board, again within a period of time to be fixed, the case could be heard in full by the Board or a panel thereof and the Board could make its findings on the basis of its own hearing of the evidence. Now, that, in my submission, would bring about a much greater degree of consistency, employees, employers and trade unions would know exactly what the procedure was, where their redress lay. In many cases it would tend to shorten the proceedings, which is very desirable when a man is out of work. If the employer was wrong the man is going to be reinstated and it is desirable that that should happen as soon as possible.

Then one further suggestion I make is for enforcement of the Board's orders, and I make this in other connections as well. . . provision for enforcement of the Board's order in such a situation could be made by amending the Act so as to permit filing of the order in the Supreme Court of Ontario and making it effective as an order of that Court. There are, of course, many parallels to this procedure in Canadian and United States legislation in other jurisdictions. Now, that's all I want to say about those discharge cases, sir

Second is the matter of prosecutions. As you know, what has come to be known as unfair labour practice sections in the Act may be the subject of prosecution. First of all, the present system of having applications for consent to prosecute screened by the Board so as to eliminate frivolous cases and complaints that are obviously without foundation has, I think, worked

well. It is satisfactory, and I would suggest that that should be continued.

Second, in cases where consent to prosecute is granted, and you will know from tables filed by the Board that there are relevantly few of those cases. The Board, or the Department of Labour, should accept the responsibility for the conduct of the prosecution. Now, I don't know whether all members of the Committee fully appreciate what must happen today. . . either an employer or a trade union who alleges infraction of one of these unfair practice sections, must apply for leave to prosecute, establish his case to the satisfaction of the Board, which means virtually establishing a prima facie case. If consent is given all he gets is a consent to prosecute. First he must draw the formal document in such a way that it is going to stand up in court, and that has to be done with great care. Second, he must employ somebody or take the risk, if he is not trained himself, of personally conducting the prosecution through the magistrate's court. Now, that is a highly specialized technical sort of procedure. We, as people. . . the States employs people full time to look after prosecutions. . . they become experts, they know how to draw the information, they know how to go ahead with the procedures. Most solicitors aren't familiar with criminal procedure from the Crown aspect of it; certainly most laymen are not competent to attempt to conduct a prosecution. But, that is what they have to do today. The Act says these things shall be effected, but if you're given leave to prosecute, you're on your own. The Department doesn't take any responsibility, the Board doesn't take any responsibility. My submission is that if the Board feels a prosecution is justified, either the Board or the Department itself should accept responsibility for the conduct of the prosecution.

Another thought I had was that consideration should be given to the possibility of establishing a special tribunal for these prosecutions under the Act. This could be composed of a selected panel of designated magistrates or county court judges, or it could be composed in some other way. It is

unfair, because of the relative infrequency of prosecutions of this kind, to expect a district magistrate who may have had no experience whatever with even the language of labour relations, to accept responsibility for determining these somewhat difficult questions. Now, I am sure you gentlemen have been on the Committee, some of you have not previously been down in the arena of industrial relations, if I may put it that way, and I suggest that some of you or some of your colleagues took a little while to become familiar with the jargon we tend to talk in this business of industrial relations. . . now, picture a magistrate who may never in his life have been very close to this kind of thing, and in an afternoon, in language that means nothing to him. . . you have got to put the facts before him. . .

MR. MYERS: Aren't there very few prosecutions?

MR. OSLER: There are relatively few, sir.

MR. MYERS: Perhaps only a few a year.

MR. OSLER: Yes.

MR. MYERS: Well, I mean, how could you set up a panel of judges?

MR. OSLER: I don't suggest that a panel should be set up for that thing exclusively, but I do suggest that there are perhaps four magistrates. . . a group of magistrates who are particularly qualified to consider this kind of subject matter, just as there are some magistrates who do traffic courts and nothing else, some who do drug cases and. . .

MR. MYERS: Yes, except that there are a lot of traffic violations and there are very few violations of this sort.

MR. OSLER: Then, in addition to the penalties that are now provided enforcement would be more practical if the Board were given the power to issue cease and desist orders against employers, individuals or trade unions. Orders of that kind could also be filed in court and made enforceable in that way. Now, the reason why I make that suggestion is, and

I think there is very general agreement the aim of prosecution under the Act, the aim of enforcement generally, should not be to penalize improper conduct by fines nearly as much as to eliminate the undesirable conduct altogether. Now, I say that there have been almost no prosecutions of unions by employers. There have been a few of employers by unions, but in either case the parties are not interested, in my experience, in seeing somebody fined a thousand dollars, which is the maximum fine. They are interested in seeing the objectionable conduct eliminated. Now, I say some provisions for the issuance of cease and desist orders similar to those in the National Labour Relations Board in the States, the Saskatchewan Board here and the British Columbia Board here, could well have the effect of eliminating the undesirable conduct in those cases rather than prosecuting them in the normal way and winding up with a fine but nothing done to improve relations, nothing done to see that these things don't occur again

Now, the next topic I want to mention, sir, is one that I think has been before you in a good many Briefs, probably, and that is the possibility of imposing some type of penalty against an employer or, on the other side of the coin again, against the trade union. . . in the employers case for promoting and assisting opposition to a trade union in the names of individual employees. By that I mean cases where employees will be put forward as representing the views of fellow employees and subsequently found, usually by the Board, that the employer himself has been the moving spirit. There has, in recent years, been quite a high frequency of intervention, letters of objection and similar documents purportedly prepared by employees filed with the Board in certification cases. I think the Board has, perhaps, provided you with figures on that topic. I understand that their experience over the years has been that approximately fifty per cent of interventions of that type have found not to be weighty enough to affect the outcome. I can only give you my own experience in the eight months between February and October last year. I was engaged in

twenty-four cases where that issue arose, where it was alleged that the employer had improperly influenced people who submit documents in their own names supposedly opposing the union on behalf of the employees. Out of those twenty-four, in fifteen cases the Board found often, without stating reasons that it was unable to attach sufficient weight to those petitions to disturb the application. In two cases the petitions were of no significance because there weren't enough of them to affect the figures anyway. In six cases the petition was given full weight and a vote directed as a result and, so far, I am sorry Professor Finkelman isn't here, because I had a little brush with him, so far, one of those cases from last year is still undecided. I haven't got a result yet. That experience of mine is fifteen out of twenty-four occasions where those petitions were found not to be what they presented to be.

MR. MYERS: You were able to cross examine these petitioners, or are you not? Whether they're supported or. . .

MR. OSLER: The Board makes a distinction there, sir. If a party, in this case, if a trade union makes allegations that those petitions are not genuine, it must file a written complaint saying -- we say they are not genuine for this reason and that reason, outlining the evidence. In that case the trade union will be entitled to call its own evidence under oath and the petitioners must support their petition under oath and be subject to cross examination.

MR. MYERS: You wouldn't be able to get any evidence under those conditions.

MR. OSLER: Well, in some cases, no. But, I didn't propose to go into that. There are many cases where one suspects this kind of thing but can't get to it.

MR. MYERS: You suspect, but you can't follow up your suspicion by cross examination.

MR. OSLER: No, sir. Not unless you make a charge and

bring something out yourself. In a normal case where there are no charges the petitioner is asked to explain his position but he's not put under oath, the Board asks the questions at the suggestion of the parties. Now, I say that the frequency of that kind of thing has been sufficient in recent years and insufficient enough to justify in my view some form of penalty attaches where fraud of that type is attempted and does not succeed. In other words, proves to be fraud. And even when the circumstances are such that the Board finds itself unable to these opposition, in other words, where they do find fraud, or may find fraud, the inevitable delays caused by those enquiries frequently mean a drastic weakening in the position of the union. In other words, if the employer who does resort to this kind of conduct fails it may still mean that he's succeeded because of the delay that is inevitable. When you get into this kind of enquiry it usually means three or four half days before the Board, and they have to fit it in when they can, and with all respect to them, they do a wonderful job of trying to keep up to date, but when you get into this kind of enquiry you're going to drop back. These cases I mentioned to you took from six weeks to ten months to decide and in that time, even if you win, even if you show that the employer has no aversion to something fraudulent your chances of having a strong union at the end of that time in the face of that kind of conduct are minimum. Now, under the present rules in the Board practice, an employer who chooses to adopt tactics of this kind has nothing to lose as he is not penalized even when it is found that he has fraudulently promoted the opposition or interference. Now, I'm submitting that when evidence satisfies the Board that an employer has acted in such a manner, the Board should have the power. . . for instance. . . I don't say this is a cure-all. . . one thing it could do would be to award costs against the employer, impose a penalty of that kind. This would be some safeguard against dishonest conduct. In addition, I submit that the Board should have power of its own motion to initiate prosecution against employers in matters of this kind where the

conduct has been established to the satisfaction of the Board.

MR. MYERS: Why not have the vote in all cases a secret vote and then it wouldn't matter what the employer did?

MR. OSLER: Well, sir, I hadn't intended to make an extended submission on that. . . I'd be inclined to agree with you in this way . . . that if the requirements for a vote were lowered, and I would suggest somewhere around thirty-five per cent, but that's a matter for argument. . . if a vote could follow in all cases with a showing of that kind I might not quarrel too much with your proposition that there should be a vote in mystery.

MR. MACDONALD: Mr. Osler, is this power of prosecution mandatory or is it discretionary?

MR. OSLER: I think it should be discretionary. I mean, I can imagine. . . I have seen cases where an employer isn't actually fully advised of his rights and he gets into something and the only way he can protect himself is to keep on getting deeper and deeper. And I think the Board . . . and went along with that kind of case and may say this -- it is wrong and we're not going to recognize what you did, but there won't be any penalty. On the other hand there are employers who do know perfectly well they are going to lay charges of that kind of thing. But, just to finish my comment on your question, sir, if I may. . . I do feel that in the absence of genuine opposition a high figures, fifty-five per cent is probably not enough. A high figure of membership should justify certification outright.

MR. MYERS: Excepting that the employers will say that the employees signed applications under pressure, too.

MR. OSLER: That's quite right, they do occasionally.

MR. MYERS: I don't think we can go into this now, Mr. Osler. . . I would love you to come back, and I would like you to consider the matters which were raised by the Canadian Manufacturers Company's Brief and discuss those matters with us and I would like Mr. Mathews to do

the same thing.

MR. OSLER: There are many of them I would like to deal with.

MR. MYERS: Well, I think that you and Mr. Mathews could render us a great deal of assistance. I would like to hear this, but not in a rush period like this.

MR. OSLER: Just in summary, I feel that the present requirement where there is no sign of opposition fifty-five per cent of membership should carry certification.

MR. MYERS: I feel that we can't go into that now.

MR. OSLER: Well, then, sir, the matter of conciliation has received a great deal of attention from this Committee and from people appearing before it, and I have set out here a summary of my feelings about the matter based on a good deal of experience. . . (a) I don't feel that there is any need for more than one forum in any one case. It is submitted that when application for conciliation services is made to the Ontario Labour Relations Board, a conciliation officer should be appointed unless both parties request the establishment of a Board. If the parties do not agree on the type of forum that is desirable, if one urges a Board and the other urges the conciliation officer, then I think that decision should be made by the Labour Relations Board and they would have regard, of course, to the size of the industry, the pattern in the past and that kind of thing. They would be in a position to decide which would have the greater chance of succeeding in conciliation. The present form of Conciliation Board, where Boards are required, is satisfactory but there is an urgent need for more qualified people to serve as chairmen. It is suggested that provision could be made in the legislation for appointment of secretaries to chairmen of Conciliation Boards. Their function would be to assist the chairman in making appointments, to mark evidence, and all sorts of relatively small matters of that kind, and in exercising this function such

persons would receive invaluable training and would themselves become fitted to act as conciliators or chairman.

It is suggested that the proper function of a Conciliation Board would be emphasized if the provision for reporting to the Minister of Labour were eliminated from the Act, or at least changed considerably. A Board which has been unable to resolve a dispute should simply so report. If agreement has been reached, this fact should also be reported. Where the effort is purely to assist the parties to reach agreement, there is no justification for the filing or publication of a "judgment" indicating what the members of the Board think the settlement should have been.

Now, if I may enlarge on that for just a moment, sir. There are a number of first class chairmen available for conciliation boards in this province. There aren't as many as we need. As a result some people are appointed who seem to have no talent for conciliation. I have run into it with some of the judges and one or two outside people. They seem to think that their function is discharged if they hear the submission, ask the parties in a sort of pro forma way if they can come to agreement on any of the issues, then say thank you very much and go home and write an elaborate report. The report may or may not be sound from the public point of view, and I'm not concerned with its value, but some boards, particularly some chairmen, seem to feel that their function is to judge the issue, to decide the issue in the sense that they write a report as to how it should be resolved and they do not make the effort, and they are very strenuous efforts that are required to conciliate parties in difficult disputes. Now, I do suggest that if the practice of expecting a chairman and the Board as a whole to write an elaborate report on the issues in those cases where they fail, if that practice were abandoned it would bring home to Boards and to the parties that they are there to reach agreement. They're not there to have somebody outline what the solution should be. They're there for the purpose of reaching a solution themselves, with the

assistance of the Board. And I think that that could be made plain in the Act that it would be of assistance to the parties if it were.

Then on the matter of arbitration. . . on the whole the present provisions for compulsory arbitration of disputes arising during the course of a collective agreement are satisfactory. It is suggested, however, that the Department of Labour could perform a most valuable function if the Act were to provide for the filing of every decision of a Board of Arbitration with the Department and for publication, in some suitable form, of such decisions. Slavish adherence to precedent is probably undesirable in matters of this kind but under present circumstances it is difficult for the parties to know, when they are drawing their agreement, how certain of its clauses will be interpreted and, if during the course of an agreement they are compelled to decide whether or not to apply for arbitration, the decision can sometimes be little more than a gamble. At present there are various private publications which issue selected decisions but there is no central depository for all decisions and hence no way for personnel men, union representatives and other practitioners in the field to familiarize themselves with the great body of arbitration decisions that have been made in the province. Publication of these decisions, adequately indexed, would lead to greater consistency and would drastically reduce the number of occasions on which parties do resort to arbitration.

Now, perhaps I am arguing against my own interest in hoping to cut down the number of arbitrations because I am engaged in quite a few of them, but I think many of them arise from the fact that parties are not aware that similar issues have come up and have been decided in almost identical circumstances. . .

MR. MYERS: Well, if you do that, aren't you going to have to have a form of appeal. I mean, if you have every arbitrator making a decision which is going to bind every other arbitrator, you're getting to a mess, for sure.

MR. OSLER: No, I wouldn't suggest that they should be in any way binding. But, you do have even today, you find decisions that are completely opposite. Sometimes they are made inadvertently, one person doesn't know about what the other person has done, and the same union or the same employer may get two opposite decisions from different arbitrators, and there is no appeal today. There is no way of resolving that inconsistency.

MR. MYERS: The only thing is that if you publish inconsistent reports aren't you going to add rather than eliminate confusion?

MR. OSLER: I suggest, sir, that by process of attrition, if you like. . .

MR. MYERS: I suppose as appeals you could weed them out, I don't know. . .

MR. OSLER: I don't think that would be necessary. I believe it would be undesirable and I think that arbitrators and the people who present the cases would gradually become familiar with certain principles that have been established and the number of cases will be cut down and the consistency would start to improve. It may be worth noting that more than two years ago the Canadian Bar Association, on a motion of the Labour Relations section, passed a resolution requesting all Ministers of Labour to arrange for publication of arbitration reports delivered within their jurisdiction.

MR. MACDONALD: Isn't one of the reasons for those variations in interpretation because of the fact that they are not aware of earlier decisions?

MR. OSLER: Well, I've certainly found that, Mr. MacDonald, that there's a great variety of decisions on many subjects and sometimes months later you come across something that's been decided to quite the contrary and nobody on that Board had any idea that the subject had been discussed.

MR. WREN: Mr. Metzler, does your office or the Minister's office receive a copy of every arbitration result?

MR. METZLER: No, we don't. As a matter of fact, what happens is that where the Minister is called upon to appoint a chairman of a Board of Arbitration, in order to complete our files on the matter I invariably ask the person who is appointed to send me a copy and that's the last document that goes in the file.

MR. WREN: It is not required?

MR. METZLER: No.

MR. OSLER: Mr. Chairman, I think I am right in saying that those reports aren't available as a right to the general public.

MR. METZLER: No, but if we were asked to produce them we would make them available.

THE CHAIRMAN: There would be no objection to it.

MR. METZLER: No.

MR. OSLER: But, nobody can go and look through those files and say what has been decided on in particular issues.

Now, in view of the very brief discussion we had a moment ago, there is not much point in my going and elaborating on "D - Certification". It would take a lot more time than I assume we have this morning to go into it fully. I will simply summarize the views I have arrived at. Then, my last submission, sir, is, again, not developed in any great detail but as there has been a good deal of discussion on it I thought it would be worth bringing this fact to the attention of the Committee. . . that is the question of the incorporation of Trade Unions.

THE CHAIRMAN: I don't think you'll see them incorporated, Mr. Osler.

MR. OSLER: I beg your pardon?

THE CHAIRMAN: I don't think you'll see them incorporated by any recommendation of this Committee.

MR. OSLER: Well, I would hope not, sir. I just wanted to

point out that this is a subject on which the labour relations section of the Bar Association has spent a great deal of time. I didn't do any of the studies, but I may say when I was Chairman of the Dominion Section, one of the topics I asked every province to look into was this whole question of union responsibility and incorporation of trade unions. The industrial provinces did make most detailed studies. There were two or three excellent papers to which I can refer this Committee if they're interested that came out of those studies. It is significant, I think, that no single province recommended incorporation or anything akin to incorporation of trade unions. In the three great industrial provinces of British Columbia, Ontario and Quebec there were positive recommendations against. . .

MR. MYERS: Why?

MR. OSLER: Because the further you go. . . again, sir
. . . we would need three or four hours on this. . .

MR. MYERS: Yes. And I believe we should hear you on
that because I think it is very important.

THE CHAIRMAN: Oh, well, I think it is pretty well decided,
Mr. Myers, that we are not going to try to incorporate trade unions.

MR. MACDONALD: Have you any suggestions, Mr. Osler, as to
an alternative way of quote -- making trade unions responsible -- unquote?

MR. OSLER: Well, Mr. MacDonald, I have always felt,
and perhaps my views in this respect. . . I have felt that we departed too
easily and too quickly from the original Rand Formula. We now have a modified
Rand Formula in many instances and various types of modifications. Mr.,
Justice Rand's idea in writing the original Ford Award was that the parties
themselves could build penalties into their collective agreements as a matter
of negotiation -- now, how serious is this thing to you as an employer -- are
you seriously frightened that there is going to be a strike and we can't be held
responsible -- are you going press that to the point of placing some penalty on

us under the agreement. . .

MR. MACDONALD: Was that in the original Rand Formula?

MR. OSLER: In the original Rand Formula, yes. And, the employers have the solution in their own hands. If that is what they honestly want. . . more responsibility and adherence to agreement.

MR. MACDONALD: I am sorry. . . well, what then do you describe as a modified Rand Formula?

MR. OSLER: Well, a modified Rand Formula, generally speaking, has taken the check-off provision and various aspects of that and kept it in the agreements and dropped the others, which was more complicated, more difficult if you like, but it did envisage the parties themselves building penalties in for infringement by the employer on one hand and by the union on the other hand. I think that is an avenue the employers have not explored. And if they are so anxious for increased responsibility they could make an honest try in that direction by building in the penalties. . . negotiating the penalties they want.

MR. MYERS: It would be very difficult to enforce the penalty. . . if the union had to be certified by the Department of Labour then the certification could be withdrawn to the penalty which would perhaps impede them. But, I don't know. . . how could he impose the penalty on the union like that? The union hasn't any funds, it hasn't anything in this country.

MR. OSLER: The easiest way to assure that that could be done, sir, would be to go along with the provisional check-off in every case . . . if you are checking-off you have the power to retain. . . then you're home free. Other cases, which are in a minority today, could be a little more difficult. But some provision of that kind could be set up.

MR. MACDONALD: Have there been any instances of employers who have or have expressed a willingness to negotiate penalties to deal with what they consider are serious infractions?

MR. OSLER: I haven't had any in my own experience, Mr. MacDonald. There have been some in which those subjects have been brought into negotiations. I am not aware of any important contracts that have included provisions of that type.

MR. WREN: This is not a personal question, but in your practice of law in labour relations, do you act as counsel more frequently for unions than you do for management, or vice versa?

MR. OSLER: Well, Mr. Wren, I have always thought it was a little regrettable in some ways, but there is almost nobody in this province who can get away with both. There is almost nobody who can get away with both, if I may put it that way. You don't develop a large practice in this field by straddling the fence. We are concerned exclusively with unions.

MR. MYERS: You act for unions. . . yes. I would like to hear you and any other eminent learned counsel who adopts the union point of view at the same time as Mr. Mathews and Mr. Dillon, too. We could then discuss the. . .

MR. OSLER: Mr. Mathews and I have been doing this for years.

MR. MYERS: I mean do it before us, though.

MR. OSLER: I would very much like to, sir.

MR. MACDONALD: Quite frankly, on this point now. . . I don't know what your reaction to it is, Mr. Chairman. . . we've had a mass of material thrown at us dealing with a lot of major points which will be the points we'll have to consider, and I've always prided myself on something of a capacity of extracting the essential point, but there has been such a mass that I think a very useful purpose would be served. Maybe in our private sessions. To have, say, a couple of acknowledged management lawyers and a couple of labour men. . . we throw this out. . . let them. . . meanwhile we're clear-

ing our thinking. . .

THE CHAIRMAN: But we're imposing greatly on their time without remuneration.

MR. OSLER: Well, I don't think we'd object too strenuously to that.

MR. WREN: I think you would, particularly on the labour . . . labour is entitled in some very vital instances. . . to avoid this, Mr. Chairman, we have had very few counsel who are representing labour. . .

MR. MYERS: That's right.

THE CHAIRMAN: Very few high priced lawyers.

MR. MYERS: We have received some very excellent Briefs, thought, on the part of labour, and I think if we got one or two good Briefs from both labour and management and had the counsel who were interested in different points of view study them. . .

THE CHAIRMAN: Would you consider that, Mr. Osler, of coming back to us at a time when we would be sitting down to consider?

MR. OSLER: I have two problems, sir.

THE CHAIRMAN: Well, thank you very much, Mr. Osler.

I assure you that these suggestions you have made to the Committee today will be given our serious consideration when we sit down to deliberate on the matters leading up to our report. Thank you very much, Mr. Osler. I hereby declare this meeting adjourned until Monday morning, May 5th, at ten thirty o'clock.

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ONTARIO
LEGISLATIVE ASSEMBLY.

THE PROCEEDINGS OF

THE SELECT COMMITTEE
ON
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TORONTO 5

LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON LABOUR RELATIONS

Committee Room No. 2
Parliament Buildings
Queen's Park
Toronto, Ontario

MONDAY,
May 5th, 1958.

MORNING SESSION

JAMES A. MALONEY

Chairman

HAROLD PERKINS

Secretary

GEORGE T. WALSH, Q. C.

Committee Counsel

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PROFESSOR BORA LASKIN

MR. ALBERT G. HEARN

MR. FRANK TAYLOR

MR. GEORGE WILLIAMS Building Services Employees Union

MR. HERMAN SORLIE

MR. WILLIAM BAIN

MR. WILLIAM POLEY

PRESENTATIONS:

A COMPARATIVE ANALYSIS OF THE ONTARIO LABOUR RELATIONS ACT
AND THE UNITED STATES NATIONAL LABOR RELATIONS ACT.

DISCUSSION OF THE ONTARIO PROVINCIAL JOINT COUNCIL #22 OF THE
BUILDING SERVICES EMPLOYEES' INTERNATIONAL UNION BRIEF.

MR. MYERS ACTING CHAIRMAN :

MR. CHAIRMAN: Gentlemen, Professor Bora Laskin, who is the Professor of Industrial Relations at the University of Toronto, proposes to submit a brief. Will Professor Laskin do that?

PROF. LASKIN: Yes, Shall I stand, Mr. Chairman?

THE CHAIRMAN: No. It is not necessary to stand.

PROF. LASKIN: I thought, gentlemen, that I would simply submit this document a copy of which you have before you and direct your attention to the breakdown on Page 1. What I tried to do, at the request of the Department of Labour, is to make a comparative analysis of the Ontario Labour Relations Act and the United States Wagner Act as amended by Taft-Hartley, and to show where there is similarity of treatment and where the treatment differs and with a view, as I said on Page 1, to assist this Committee in its deliberations by giving you some prospectuses in evaluating the Ontario legislation.

Now, on Pages 3 and 4, to skip over, I tried to set out the unfair practices in tabular form so that you get a bird's eye view of the treatment in respect of unfair practices prohibited to employers, and then on Page 5 the unfair practices prohibited to trade unions. And I have just gone through it that way trying to pick. . . not trying to pick out but trying to break down the significant similarities and differences. I thought that if this Committee wanted me to come back after they have had a chance to look at this Brief to ask any questions that I would be very glad to answer them. But, at the moment this does not represent either the views of the Department of Labour, nor does it represent my views -- it's supposed to be a fairly objective appraisal, and I shall leave it at that and if any of you gentlemen. . .

MR. MYERS: I think we would be very interested in knowing your own views about any matters in which you have views different from. . .

PROF. LASKIN: . . . from those here. . .

MR. MYERS: Yes.

PROF. LASKIN: Well, I am in the hands of this Committee, and I would be delighted to be of whatever service I could and at the Committee's pleasure I would be glad to come back.

MR. MYERS: Well, thank you very much indeed. We will read your Brief with interest and I expect we will be calling on you again if you'll come. Thank you.

MR. PERKINS: Mr. Chairman, the next delegation is from Building Service Employees' International Union. If they will please come up to the witness table. . . This Brief is a continuation of a hearing which was held October 2nd, but unfortunately we are short of the original Briefs, so I can't distribute them.

APPEARANCES:

MR. ALBERT G. HEARN
MR. FRANK TAYLOR
MR. GEORGE WILLIAMS
MR. HERMAN SORLIE
MR. WILLIAM BAIN
MR. WILLIAM POLEY

PRESENTATION:

CONTINUATION OF HEARING OF BRIEF OF THE ONTARIO PROVINCIAL
JOINT COUNCIL #22 of BUILDING SERVICE EMPLOYEES' INTERNATIONAL
UNION.

MR. PERKINS: Mr. Chairman, I believe we were down to Page 15 of the Brief when the meeting was adjourned, and perhaps Mr. Hearn would recap briefly some of the main points of what we have already discussed so that we could continue the hearing from that point.

MR. MYERS: When you were presenting your Brief in the

first instance did we discuss each page as went along.

MR. HEARN: We had read through the Brief in its entirety and we were at the point of discussing Section 78 of the Ontario Labour Relations Act which appears in our Brief. The argument on this appears between pages 15 and 21.

MR. MYERS: I think perhaps it might help us if you refreshed our memories very briefly with each . . . with the content of each page as we go along, or each division that you've made.

MR. HEARN: Did you wish to start right back at the beginning, sir?

MR. MYERS: No. It is all reported. . .commencing at Section 78 at Page 15 of your Brief.

MR. HEARN: If we may, we were at the point of discussing the removal of Section 78 from the Act completely and we had asked for its removal from the Act. . . we had given some instances of matters that had been used, such as in the Victoria Hospital in London, and in the Welland School Board and one or two other examples. Now, since we appeared before the Committee last in October a couple of other rather pertinent matters, we believe, have happened which we would like to draw to the attention of the Committee, with your permission.

We organized a group of people in what is known as the Glen-Stor-Dun-Lodge. This is a Home Lodge for the care of convalescent people, aged people and chronically ill. It's owned by a group of municipalities and it is operated by the United Counties of Stormont, Dundas and Glengarry. Some years ago there was apparently a move in an organizational direction by another organization and, resulting from that move the United Counties utilized Section 78 and removed their employees from the Act. Following our organizing this group we wrote a letter to the Superintendent at the Glen-Stor-Dun-Lodge at Cornwall, Ontario, in which we said as follows:

"This letter is to advise you that the employee of your institution have membership in the Building Service Employees' International Union, Local 204.

"It is our understand that some years ago, your board of Governors passed a resolution removing the employees from the terms of the Labour Relations Act by utilizing Section 78. Since this is the case, it makes it impossible for us to follow the normal procedure of the Labour Relations Act in its features of certification, and we were, therefore, wondering in view of this, if the board would be willing to meet with us for the purpose of discussing the Union Agreement if they satisfy themselves that we represent the majority for the purposes of working out a collective agreement covering their working conditions. Or it may be that they would desire now to bring the employees back under the Act by rescinding the resolution and we could then apply for certification and proceed in a normal manner to Collective bargaining.

Awaiting your earliest possible reply, we remain. (Signed: A.G. Hearn, President)." Dated February 12th, 1958

We received a reply from them in which they stated to us that the matter would be dealt with by their board and a copy of that reply said: (There was an earlier letter on February 5th indicating our wishes prior to February 12th)

"Your letter of February 5th, 1958 received regarding Labour Relations Section 78 etc.

"May advise you that our Board will meet February 22nd, 1958 when this matter will be brought to their attention. (Signed: S.R. Taylor, Superintendent)"

It was referred then to the United Counties and on April 24th, which is but a couple of weeks ago, we received a letter from Mr. L.C. Kennedy who is the Clerk-Treasurer of the United Counties, in which he

said:

"Further to my letter of February 28th, in answer to yours of February 25th, and prior correspondence regarding the Labour Relations Act and our By-law passed under Section 78 thereof.

"This correspondence was placed before Council at their recent session and a motion was duly inscribed in the Minutes, advising that Council did not at this time deem it advisable to rescind or amend the said By-law."

This is another instance, sir, and we desire to file copies of this correspondence with your Committee in order that you may have it before you. Now, further to this letter, gentlemen, another instance that we would like to draw to your attention of the inequities of Section 78, is to be found with the Union Separate School Board in Windsor, Ontario. This is a suburban municipality of the City of Windsor which have their own separate council and their own separate school board, both public and separate, and we have both the public school board and the separate school board organized into our organization. The separate school board was organized in late 1957 and the union was certified in December of 1957 and commenced collective bargaining in January and February of this year. We had reached the stage by about February 27th or thereabouts that we had reached a total agreement with the exception of clarification of certain wording of some of the clauses. This was sent to the school board for their approval and asked if this was in accordance with agreements reached and if so, to please notify us.

MR. MYERS: That is, you had discussed it.

MR. HEARN: We had discussed it and we had arrived, sir, at an agreement. For all intents and purposes we were ready to sign it with the exception that we had to clear certain wordings to make sure it was agreeable. We submitted this wording and we asked for an early reply, and on March 7th much to our surprise -- now, mark you, this board had gone through certification proceedings, through all the stages of collective

bargaining to the point of putting their name on a collective agreement, and then they wrote us and said:

"Following our recent meeting the Board of Trustee of the Sandwich West Separate Schools, carefully review ed the situation relative to the employees. The Board has asked me to express appreciation to you for the very informative ideas and suggestions you have conveyed to us at our various meetings. However, the Board feels that at this time the problems presented by the above-mentioned employees are definitely trivial and steps have already been taken to improve some of these conditions. At the request of the Board I am forwarding to you with this letter a copy of a resolution passed on March 3rd, 1958."

The resolution reads as follows:

"Moved by Mr. T. P. Coughlin, seconded by Mr. G. Ottenbrite that it is hereby declared the Board of Trustees of the Sandwich West Union Separate Schools, United Stections #2, 3, 4, 7 and 9, pursuant to Section 78 of the Labour Relations Act, that the provisions of the Labour Relations Act shall not apply to the Board of Trustees of the Sandwich West Union Separate School Board United Sections #2, 3, 4, 7 and 9 in its relations with its employees or any of them." (Signed by the Chairman Dr. B.J. Nolan, and Secretary Treasurer Leo P. McKitterick.)

Now, gentlemen, I ask you in fairness if Section 78 is to be continued in the Act how can an organization continue to be confronted with this sort of thing, in situations like this where a public body that you are reluctant to shut these operations down because they involve such a public hardship if you do.

MR. MYERS: Did the employees discuss strike action then?

MR. HEARN: We have not discussed strike action. We have written back to the Board asking them if they would consider signing an agreement outside of Section 78, and we have had a reply back saying they

will meet us, probably on Monday, May 12th. But, this sir, is not a satisfactory arrangement . . .

MR. MYERS: Yes, I know.

MR. HEARN: . . . or satisfactory answer to this problem.

It is just two more brazen incidents of the existence of inequities of Section 78 in the Labour Relations Act, which we feel should be immediately withdrawn from the Act and if these employees, as the Minister of Labour said when we were here before you last October, if every avenue has been made available to these people to organize and to bargain, then why should the gate be left open for the municipalities to say -- we will not bargain even though the employees want to bargain -- we will not, we will utilize Section 78.

MR. MACDONALD: Well, Mr. Chairman, it seems to me this falls in to the category of bargaining in bad faith and strange as it may seem, it's legalized, yet. . .

MR. HEARN: Yes, and because it is. . .

MR. MYERS: Have you considered and know it is legalized?

MR. HEARN: Yes.

MR. MACDONALD: What I am saying is that you carry negotiations to that stage and then just to cut them off is, in effect, bargaining in bad faith . . . but, it's a legalized bargaining in bad faith by virtue of the existence of Section 78.

MR. MYERS: Yes, I understand.

MR. HEARN: If this were a normal employer who were to write you on this condition and say we have bargained to this point and we appreciate your efforts, and they compliment us for our efforts, and then they say -- but we are going to take you out of the Act. . . if it was a normal employer you would say it is bad faith, but here they have an Act which permits them to do.

MR. MYERS: Yes, I think. . .

MR. HEARN: And gives them the avenue of escape.

Now, there was one other point, sir, that we would like to raise before moving on. We had some observation on the Brief that was presented by the Ontario Hospital Association, and I don't know whether you would prefer us to put these observations in at the end of our presentation. . .

MR. MYERS: Have they to do with this section?

MR. HEARN: Well, yes. In parts they have.

MR. MYERS: Well, I think you'd better say all you have to say about Section 78.

MR. HEARN: Well, sir, if you will note in the record which was before you on October 23rd, the hospitals in their Brief at Page 3 dealt at reasonable length with the right of exclusion of hospitals under the Labour Relations Act, and strangely enough they say that all hospitals should have the privileges of Section 78. Now, I don't know how far we can frustrate an issue of this nature, but I suggest to this Committee that if Section 78 were to be broadened, and in fact if it is not being removed from this, it can only lead to a continuation of the existing frustrations that are before us today, and for that reason we are asking the Committee to certainly deny any further extensions of 78 as requested by the hospitals, and if anything, and please do listen to some sound reasoning, and we believe we have placed several very good examples before you. . . as an organization I think we have brought as much evidence as anyone on this Section before you for sufficient reasons why this Section should be removed entirely.

MR. MYERS: What have you to say about compulsory arbitration, Mr. Hearn?

MR. HEARN: We made our views clear, sir, and we are going to now deal, when we get back to our Brief, with our views on the matter of compulsory arbitration. We are suggesting some changes in the Act in this direction. That is the observation on Section 78. . . there are some other

observations which do not apply to 78, which we will probably touch upon when we are through at this point.

If we may turn over to Page 21 (of Brief) this is where we left off at. . .

MR. MYERS: Might I say a word to the Committee. . . if we have any questions to ask the association, we ought to do it as we go along and not try to go back. All right.

MR. HEARN: On Pages 21, 22 and 23. . . I don't know whether you desire us to read these as a refresher. . .

MR. MYERS: Well, if you could tell us briefly.

MR. HEARN: We are merely pointing out on this stage of the Brief. . . we are reviewing some of the things we have previously said and leading in to our argument for the recommendation of a couple of changes that we desire to see made in the Act and which we believe would improve the Act considerably if it were done, and we get to the actual recommendations on Pages 23 and 24. At the bottom of Page 23 we say:

Your Committee may ask how we, as a union, propose to deal with this matter. . . we are dealing now with the strike situation in hospitals and the finalizing of agreements, and so on. . .

(MR. HEARN READS REMAINDER OF BRIEF)

MR. HEARN: Now, this would have a tendency, sir, to perhaps lengthen the proceedings of negotiations or conciliation in the hospital situation, but we believe the delay would be certainly well recompensed in the sense that it would bring about a final conclusive step and one which would insure that an institution as important as a hospital, that they would not be vulnerable to a strike weapon, that they would be guaranteed the services. Now, the hospitals, in their brief to you on October 23rd, dealt at some length with the matter services were of a vital concern to the public and, in fact, they made some inferences that if an employee joined the union they lost their

loyalty to the institution, which we question very strongly. I think our brief bears out the fact that we, representing the majority of hospital employees in this province, are not speaking in any disloyal sense of the word at all but in fact are trying to be rather constructive in our approach to this problem in getting down to some pretty solid thinking. We believe that the hospitals should go uninterrupted, there should be no relinquishing of services, the care of patients, the sick and suffering should be attended to, but then in exchange for this, the employees in the hospitals should not be asked to take inferior conditions without some recourse to a procedure that is going to guarantee them some fair and equitable treatment. I may draw this Board's attention to a situation that exists at the present moment where we have the Hotel Dieu Hospital, in the City of Windsor, a hospital employing some 300 people. This hospital has been organized by our Local 210 in Windsor for some ten years now, and we have had a continual bargaining relationship with this institution. Constantly we have run into a stone wall in certain points of bargaining, one being specifically the matter of compulsory check-off or compulsory membership in the union for new employees. In 1950 we received a recommendation from a conciliation board granting the compulsory check-off for all new employees. Short of a strike we were not able to enforce it. In 1957 and '58 we went through negotiations and went back to a conciliation board level and in 1958, as of April 28th, I received the report of the conciliation board wherein they again gave us the compulsory check-off for new employees. The question is now, the hospital nominee dissented. . . what will again happen in this instance? And is the union expected to take the same step as an industrial union or plant union would take to enforce a conciliation board report which has twice given us a condition that exists. Now, the hospitals, when they presented their brief to you on October 23rd, on the matter of union shop, were very emphatic that the legislation should provide something which prohibited the signing of this type of agreement in an institution, and at that time under the

questions and answers of the Committee, the representative of the hospitals said that compulsion existed in a minority of the organized institutions in the province of Ontario. As late as this morning I went through the records of our organization and we happen to have the records of every agreement in the province of Ontario in my office in Toronto, and we find that out of 5,800 employees working in hospitals in the province of Ontario, 3,600 are covered by compulsory check-off or compulsory membership clauses in union agreements. Now, this is by no means, sir, a minority. By any stretch of the imagination this is a reasonably good majority of institutions. And the absent ones are. . . there are only eight hospitals that do not have compulsory. . .

MR. MYERS: What do the membership of the hospitals concerned think about compulsory check-off. . . is that your headquarters' idea, or is it the idea of the employees?

MR. HEARN: The employees, year after year, sir, have instructed us as their officers and leaders, and we have the top officers of the four or five locals in the province of Ontario here with us this morning, and the employees have emphatically year after year requested and so stated -- why should we continue to go out year after year and negotiate these benefits and have these new people coming in and accepting the fruits of our labour without having to bear their share of the responsibility?

MR. MACDONALD: Which are the eight hospitals which are not included?

MR. HEARN: The eight hospitals that do not have a compulsory check-off, sir, are the Victoria Hospital, in London, the Beck Memorial Sanatorium, the Toronto General, the Toronto Hospital at Weston, the Weston San, as it is commonly known, the Pugh Memorial Hospital at Galt, which is South Waterloo, and the Toronto Western. . . and the Belleville General Hospital, and strange as it may seem, the Toronto Western, the Belleville General Hospital and the Pugh Memorial are all represented by the

same labour relations consultant in their negotiations with our organization.

MR. MACDONALD: Who is he?

MR. HEARN: Mr. S. T. Garside.

MR. WREN: Also represents the Hospital Association.

MR. HEARN: Yes, I believe so, sir. He appeared with the hospital association.

MR. WREN: Well, Mr. Chairman, coming back to this compulsory arbitration for a moment. . . let's forget the humanities involved and think about labour relations as such. . . do you not think that if Section 78 was abolished compulsory arbitration might become . . . in public institutions. . . might become parallel to Section 78. . . by that I mean, officials of these institutions might feel. . . well, it's going to compulsory arbitration anyway and there can't be any economic reaction, so why bother with this nonsense of conciliation and arbitration, and let's just go through the motions and stall it as long as we can and then throw it to an arbitration board for compulsory award. Would it not, in effect, set up what you're seeking to take out in Section 78?

MR. HEARN: No, I believe, Mr. Wren, in fairness that if the conciliation proceedings, and we have thought about this matter over a long period of time. . . we believe that if Section 78 were abolished and if the conciliation proceedings are left in and compulsory arbitration used only as a last resort, we believe that both sides. . . and the union has got to take a look at this in the same way that management has. . . we believe that both sides will take long hard looks before resorting to arbitration and will make every reasonable effort to wind up an agreement short of arbitration, because no one appreciates a third person telling you what to do, unless you are in the very hard-core center of this thing.

MR. WREN: But, then, the executives on the other hand might tend to say -- well, this is going to compulsory arbitration anyway, so

there's no point of me getting down to too serious thought in bargaining . . . we'll let the arbitration board worry about it. . . why should I?

MR. MYERS: Well, supposing they do, Mr. Wren, what of it?

MR. WREN: Well, what I am getting at is that if you feel . . . if you are in favour of compulsory arbitration. . . it is not a trade union line of thinking. . . but if you are in favour why bother with the conciliation procedures at all? Why not set up a board. . . call it what you will. . . and take your problems to them at the outset and get them settled and done with?

MR. HEARN: May I refer you, Mr. Wren, back to Page 21. . . wherein we point out that we have been dealing with these various institutions. Now, mark you, we have a large number of hospital agreements in the province of Ontario. . . something like thirty-five hospital agreements at the moment are covered by Building service appointments in this province . . . now, in the paragraph at the bottom of Page 22, we say this. . . eleven years of collective bargaining with institutions named previously has indicated to us that in the vast majority of instances the terms of the Labour Relations Act are fair and equitable and would not have created problems because of the type of employer we deal with, but there is within this hospital group a core of individuals who absolutely refuse to discuss certain bargaining matters with our organization, and in fact, have told us on these issues, unless we are prepared to drop them now and forever that we might as well prepare ourselves for the inevitable strike weapon.

MR. WREN: Is that statement not true of every segment of management side of labour relations? You find it in any sphere of labour relations that there are a certain number of employers who go along and bargain conscientiously and everyone gets along fine, but there's a hard core for instance, the Noranda group in the mining industry. . . they just don't want unions. . . period. They'll do everything that they can to stop it. There is nothing peculiar in hospitals and public institutions that there is a hard core of resistance.

MR. HEARN: The hard core bargaining is not peculiar, I agree with you, Mr. Wren, but do you now then expect us to take the same

action in a hospital that the union is compelled to take in the hard-core employer in mining or steel, or any other industry, and take the people out, wherein the plant you can close it down, and that the public suffer no hardship other than the fact that it may short supply the market or create somewhat of an inflated price over a period of time. . . but, take for example the Toronto General Hospital. . . where we have bargained since 1944. . . just across the street . . . in fourteen years we have been unable to get that Board to sit down and talk about any form of compulsory union membership or compulsory dues deduction. . .

MR. WREN: No, but would compulsory arbitration improve that condition?

MR. HEARN: Compulsory arbitration would bring down a decision by a third person that would be final and binding.

MR. WREN: That wouldn't be bargaining.

MR. HEARN: Pardon?

MR. WREN: It wouldn't be bargaining. If they are as tough as you say they are they would just send it to compulsory arbitration.

MR. HEARN: All right. Then the arbitrators will settle the issue, will they not? In the same way that the police or firemen situations will be settled. And they'll be settled without a stoppage of work.

MR. MACDONALD: Mr. Chairman, it seems to me the key point here is that there is a group of people faced with the conditions in this industry who, if they are willing to forego the economic weapon and, in so doing I think they are being highly responsible, they should not be left with the frustrations of Section 78. . . I mean, this seems to me this is grossly unfair, and this is the point.

MR. HEARN: That's right. It's a tie in of the two together.

MR. MACDONALD: There's one question I wanted to ask you, Mr. Hearn. . . a group of hospital services employees, in presenting a brief last week, raised a rather interesting proposition. . . because your approach to compulsory arbitration has to be somewhat different than it is in the trade union movement generally, that is, in the trade union movement generally it

is regarded with a great deal of scepticism as, in effect, undercutting their most powerful weapon in the final analysis, that what should happen is the establishment of what you might call the Hospital Services' Employees' Act under which hospital services employees would come, so that they wouldn't be under the Labour Relations Act at all. . . you would have the particular circumstances that the firemen have who come under their Act. What's your view on that?

MR. HEARN: Our view on this, Mr. MacDonald, is this . . . that in fairness, and we have to look at this thing from the total picture, we can't look at it from the narrow standpoint. . . we have to look at it from the overall situation. . . the Labour Relations Act has been fair in the majority of instances, both to the employer and to the union in our organization, and we have been able to operate very fairly under the Labour Relations Act, and we think that we should not be removed from the Act because it would tend then, rather than having a conciliator or a conciliatory body come in and try to make recommendations where you couldn't agree, you'd do as the policemen and firemen do and go directly to arbitration. Now, this would not necessarily be in the best interest of everyone concerned, because an arbitration board will invariably make no attempt to conciliate. . . they'll hear the evidence and write a report, which we feel, in many instances, would not be fair. We believe that conciliation in the case of hospitals has a very real part to play and in most instances has worked successfully for our organization, and for the employer.

MR. MACDONALD: In other words, you would stay under the Act with the rider that you accept compulsory arbitration as an alternative to the strike weapon?

MR. HEARN: If 78 is removed.

MR. MACDONALD: Yes.

MR. WARDROPE: Mr. Hearn, what are the objections of these different hospital boards to sitting down with you and debating. . . why won't they even sit down with you? Have you any reason to know why?

MR. HEARN: Oh, they sit down, sir. They sit down and go through the motions, but they treat. . . it's a strange thing, with the exception

of the hospitals we have named. . . with the exception, and I want to be fair about this. . . I would say with the exception of three of these that we have named. . . possibly four. . . but three definitely. . . they make no real attempt to sit down and negotiate an agreement. They meet us at 3:30 in the afternoon and their lawyers are in a hurry to get to another meeting at five o'clock, and they go through three such meetings and then they come back and say -- well, we think the best thing to do is to go to conciliation, and they treat it as so much of a nuisance value. Now, that is not the case in all instances, and I don't want to leave that impression with this Committee. . . there are three or four instances where real sincere attempts have been made to sit down and bargain. But they are very hard bargainers on certain points. And, it isn't that we do not respect hard bargaining. . . we are hard bargainers ourselves, we feel. But, we do resent very strongly the fact that you are just taken through about three hours of meetings on six or seven major issues . . . you never get an opportunity to properly discuss it, and then they say -- well, suggest that unless you drop this point, this point and this point, you might as well go to conciliation and get it over with. . . then you get to the conciliation level, as we did a year ago, at the Toronto General Hospital, and the conciliation officer walks in and says. . . well, is our old friend union security still an issue. . . and we said . . . yes, and he said -- well, we might as well go on with a conciliation board. Now, that was the extent of an actual meeting with a conciliation officer in the instance of the Toronto General Hospital. We never even got inside the room to meet management. We were separated at the onset. . . a question was asked. . . an answer was given. . . we moved on to a board. Now, if that's bargaining or conciliating, I fail to see where it plays any part.

MR. WARDROPE: These boards change from time to time and the reception you've had is pretty nearly always the same each time.

MR. HEARN: That's right. In the instances where that type of reception exists, that remains an indefinite, inchangeable, or unchangeable situation.

MR. WREN: Do you think you'll change them?

MR. HEARN: No. . . but, at least we'll get an opportunity

to fairly discuss it.

MR. MYERS: No, the only thing is. . . how open is your mind on a change in the check-off system, or is. . . is your mind free to be changed if reasonable arguments can be presented, or do you believe none can be presented?

MR. HEARN: I think, sir, eleven years of bargaining without a strike indicates that our mind has been very open on this matter. Many unions would have hit the street long ago. I think our minds have been more than open on this matter.

MR. WARDROPE: And it is your contention, Mr. Hearn, too, that a majority of employees would like to see them sit down and arrive at some arrangement whereby this thing could be satisfactorily settled to everybody's satisfaction? Is that right?

MR. HEARN: Yes. That's right.

MR. WREN: Have you every approached them on the voluntary check-off?

MR. HEARN: Oh, we have voluntary check-offs, sure. We have check-offs in all the hospitals but one.

MR. WREN: Is the Toronto General one of those?

MR. HEARN: Sure. And we have maintained about a 69 per cent majority over eleven years of bargaining.

MR. MYERS: Well, what's the matter with the voluntary check-off?

MR. HEARN: Nothing other than the fact that you continually get these free riders accepting the fruits of your labour and paying nothing toward the costs. That's what's wrong with it. If the conditions that have been established in that Toronto General Hospital since 1944 are, in many instances, nothing short of miracles.

MR. MYERS: Does the agreement say that everybody must belong to your union?

MR. HEARN: No. This they will not give us. This they will not give us . . . any such an agreement. The Act says we have to bargain for everybody, but the agreement says only those who care may belong, and

only those who want to pay will pay. The others can accept all the fruits of bargaining, which we are compelled under the Act to do. . .

MR. MYERS: And not pay anything. . .

MR. HEARN: And not pay anything.

MR. Morningstar: Would there be many. . . pardon me. . .

MR. MYERS: Wouldn't they have to be members of your union?

MR. HEARN: No.

MR. MYERS: . . . before they could work in the hospital?

MR. HEARN: No. Because it's a wide open shop with strictly a voluntary check-off of union dues. There is no membership compulsion. . . there is no check-off compulsion.

MR. MORNINGSTAR: What percentage would there be paying the union dues?

MR. HEARN: Our percentage in the Toronto General has fluctuated between fifty-eight and seventy-two per cent. It has averaged about sixty-nine per cent over that period of time.

MR. WREN: Do very many pay direct with out the voluntary check-off?

MR. HEARN: No. Very few. We discourage this because we have death benefits and so on and. . . if employees forget to come in and pay their dues they're out, and we prefer to tie it all in together.

MR. WARDROPE: Mr. Hearn. . . all the other hospitals in the province have the compulsory check-off except those three that you've mentioned . . .

MR. HEARN: The other ones that are organized, yes, sir.

MR. WARDROPE: And it's working satisfactorily there and everybody seems to be satisfied?

MR. HEARN: Yes, sir. Apparently so, sir.

MR. MYERS: What arguments are against the clause that all employees be in a union shop? What arguments are against it?

MR. HEARN: Well, sir, it's the old strawman. . . it deprives an employee of his democratic rights. That's the argument. . .

MR. MYERS: I mean. . . there isn't any argument that's peculiar to hospitals only?

MR. HEARN: They argue that it's depriving a man of his democratic rights and compelling him against his democratic rights to belong to something he may not want to do.

MR. MACDONALD: I have been trying to exercise my democratic rights by not paying my Income Tax for a number of years, and I still have a little difficulty getting away with it.

MR. HEARN: That is our position, sir, insofar as the compulsory arbitration is concerned. I think we have made a reasonably strong case before you as to why we would be willing to do it. . . we re-emphasize our position. . . we would want to remain under the terms of the Act in its conciliation and certification proceedings, and if any change were made it should be strictly a Section in the Act providing that in the instances of hospitals, nursing homes and convalescent homes where agreement cannot be reached-after a conciliation board report the matter would be submitted to final and binding arbitration. This is our position on that matter.

Now, the only other submissions that we have, sir, arising out of the hospital brief of October 23rd in which they ask for certain exclusions of employees under the Act, and, incidentally, tying in with compulsory arbitration they also requested the Committee to insert clauses that would prohibit strikes in hospitals, but they offer no alternative as to what they would accept in lieu thereof. They ask for the exclusion of Nursing Assistants. . . male and female. . . and Nursing Aides. And, in this, we have this to say -- in their brief of the hospitals, they noted that the common bargaining unit, I believe, was the phraseology they used, was as they spelled it out. . . and they spell it out by work classifications and they infer that this is the bargaining unit which is recognized by the Labour Relations Board. . . on Page 9 of their brief. . . there has been a growing tendency on the part of unions to claim that Nursing Assistants be included in Building Service bargaining units. The Labour Relations Board ordinarily classifies such employees as Cleaners, Maids, Porters, Laundry Workers, Ward Aides, Orderlies, Elevator Operators, Kitchen Help, Gardeners, Painters, Wall Washers, Window Cleaners,

Night Watchmen and certain trade maintenance employees as composing the bargaining unit. This is not true. This wording is taken directly from the agreement of the Toronto General Hospital which was the first established bargaining unit of a hospital before the Labour Relations Board. Over the period of years, and especially since 1948 the Labour Relations Board has issued certificates with the language. . . the Board doth certify all employees of the so-so hospital, save and except. . . and then they except from the certification everyone above the rank of non-graduate nurse. . . that's a nurse in training. . . including technicians and radio therapists and electrocardiographists, cardiograph operators and so on. . . but, certainly they no longer, and have not for, to my knowledge, ten years, used the language suggested in the hospital brief. Their language in the certification is an all-embrasive industrial unit. The only reason nursing assistants come in to the actual discussions at all is for two reasons. . . one. . . at the close of World War II there was a considerable shortage of graduate nurses and the province of Ontario took the leadership of establishing a nursing course for females which, when a girl graduated she became known as a certified nursing assistant, and this was the first introduction of this language. Now, since this group have come into the picture considerable discussion has taken place on almost every application for certification since 1947 as to whether this group should or should not be included, and the argument invariably comes out that the Registered Nurses are going to take these girls into their organization. But, eleven years have gone by and they still have not given these girls any type of recognition at all, and the Labour Relations Board takes the position that until such an instance does happen that they should be entitled to some form of a bargaining agent and they are grouped in. Now, the male nursing assistants only appear, to my knowledge. . . and I have a knowledge as, I guess, anyone in this field. . . in, I believe, four instances in hospitals in the Province of Ontario. . . and that's because the hospitals themselves elected to change an orderly status to that of a Male Nursing Assistant to identify him closer with the tie-in of the nursing group, and they changed the classification, and the Toronto General Hospital agreement would bear me out in the wording that they say -- male nursing assistants, formerly known as orderlies.

MR. MYERS: They're exceptions to the. . .

MR. HEARN: No. They're included. What the hospital is asking, the Hospital Association is asking that they be exempted along with these others and we say, in fairness, knowing the operation of the institution as we do, they should not be excluded. . .

MR. MYERS: How many are there with you now?

MR. HEARN: We have them in all the institutions where we bargain. They are part of the bargaining unit.

MR. MYERS: There are no nursing assistants?

MR. HEARN: Oh, yes, we have the nursing assistants. The Labour Relations Board includes the nursing assistants at the present time, and we are asking that this be continued and that they not be excluded.

MR. MORNINGSTAR: I just came out of the hospital, and they are the most important in the hospital.

MR. MYERS: Do you represent any nurses at all?

MR. HEARN: No.

MR. MYERS: Does anybody represent the nurses?

MR. HEARN: Yes, there is. . . the commonly called Catholic Syndicate of Quebec came into the Province of Ontario at the City of Ottawa about. . . I am speaking now from memory and time does go quickly, but I think it is about six years ago, and they organized the registered nurses at St. Vincent de Paul and I believe also the Ottawa General which were the two Catholic hospitals in Ottawa at that time, and they were first of all turned down by the Board on the grounds that they were not an organization or union under the meaning of the Ontario Act. They later went back and amended their constitution and they were certified for these nurses. Now, whether they ever accomplished an agreement or not I am not familiar.

MR. MYERS: Generally nurses are not represented by a union?

MR. HEARN: Generally nurses do not come under the sphere of the organization. No.

MR. MACDONALD: Aren't there nurses in some of the Toronto unions?

MR. HEARN: In the Civic Employees I believe they have the public nurses, Mr. MacDonald.

MR. MACDONALD: But, they're registered nurses?

MR. HEARN: They're registered nurses, yes.

MR. MYERS: They have their association.

MR. HEARN: Yes.

MR. MACDONALD: What is your view on the inclusion of nurses?

MR. HEARN: Well, at the present time they are covered by the Act, and our view is that if since they are covered by the Act, if they were to be organized they rightfully belong in a separate union, or a separate bargaining unit. . . I don't say necessarily covered by . . .

MR. MACDONALD: They are covered by the Act in what way?

MR. HEARN: They can be certified.

MR. MACDONALD: They can be certified.

MR. HEARN: They can be certified. . . but our belief is that they should be certified as a separate bargaining agent because they have no common interests with anything from a nursing assistant down. Actually, once you leave the nursing assistant level and come down from there, or start at that level and work down back through the institution there is no area of interest between the nurse and this other group of people. The registered nurse is an area of interest all on her own. And, after all, if these nursing assistants have been around for eleven years and the nurses have still found no area of interest to affiliate them through their Registered Nurses Association, it obviously appears that there is no common interest between these two groups. . .

MR. MACDONALD: Certainly not professional interest.

MR. HEARN: Not a professional interest to that extent, that is correct, sir. . . so, we believe that since they do come under the Act, and if they did desire to be represented by a union, they should have their own bargaining unit and bargain as a unit for themselves and themselves only. There are peculiarities, you see, that exist with registered nurses and which will have to be tested by the Labour Relations Board. For example, the Labour Relations Board normally excludes supervisors and people of this

nature.

MR. MYERS: Now, I don't want to hurry you, but we must close up at one o'clock, and we have some other people. Would you mind if we. . . have you anything more that you wish to say to this Committee?

MR. HEARN: No. I was just finishing up this question of registered nurses that they may apply in a separate bargaining unit. With that I am through, sir. I was about to say that the registered nurses are much in the same situation as the construction industry where a girl may find herself today as a floor nurse and tomorrow as a supervisor, or the other way around. . . a supervisor or a floor nurse. . . so that the Board will have to determine at that level just who they will or will not include. And that's another reason why they should have their own separate bargaining unit. That's our Brief, sir.

MR. MYERS: Before you go, you omitted giving us the copy of the letter that you wrote to somebody which is the one I would like to see mostly.

MR. HEARN: I believe there are three copies that we filed with you. There may be an omission of the letter of February 5th.

MR. MYERS: It is the one that started all this that you. . .

MR. HEARN: On February 5th. . . this one I did not bring copies, but I'll file them with Mr. Perkins tomorrow. They will be filed by mail late today or tomorrow.

MR. MYERS: I didn't pay as much attention as I ought to have when you read it. Perhaps you would let me see it on your way out.

MR. HEARN: I have the file with me. . . supposing we just drop the whole thing in. . . I don't believe we brought the complete Glen-Stor-Dun Lodge file with us and we may not have this letter of February 5th. . . but, in any event, we'll get it to you this afternoon or tomorrow morning.

MR. MYERS: May I say before you leave that we appreciate very much the trouble you went to in preparing your Brief and the ability with which you presented it, and what you said will certainly be taken into consideration in our deliberations.

MR. HEARN: We have appreciated, sir, the opportunity to appear before the Committee and we hope that the suggestions we have made will be given full recognition and we believe if they are and they are incorporated, they will make the Ontario Act a much better. . .

MR. MYERS: I think that we will find them worthy of a great deal of consideration.

MR. HEARN: Thank you very much.

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LEGISLATIVE ASSEMBLY.

THE PROCEEDINGS OF

THE SELECT COMMITTEE
ON
LABOUR RELATIONS

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SELECT COMMITTEE ON LABOUR RELATIONS

Committee Room No. 2
Parliament Buildings
Queen's Park
Toronto, Ontario

MONDAY,
May 5th, 1958.

MORNING SESSION

JAMES A. MALONEY

Chairman

HAROLD PERKINS

Secretary

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SUPPLEMENTARY BRIEF OF THE ONTARIO HOSPITAL ASSOCIATION

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MR. ALFRED DAVIDSON
MR. WILLIAM McDOWELL

PRESENTATION:

A BRIEF BY THE BRICKLAYERS' AND MASONS' UNION, LOCAL NO. 1,
OF HAMILTON

ONTARIO HOSPITAL ASSOCIATION:MR. MYERS ACTING CHAIRMAN

MR. PERKINS: Mr. Martin and Mr. Dillon, of the Ontario Hospital Association, have a supplementary brief to present this morning, and in view of the fact the Building Services Employees have just presented their views they may have some observations to make on it, but I think it is only their intention to present this at this time.

MR. MYERS: I don't want to rush you, but on the other hand, we must close off at one o'clock.

MR. MARTIN: Mr. Chairman, we were actually quite prepared to let our Brief rest on the submission that we sent back because we were asked for certain specific questions on our last appearance and we wanted to answer those questions. . . our supplementary presentation here really deals with those and one other point has developed since that time.

MR. MYERS: If you could discuss your views on Section 78 it might be an excellent time.

MR. MARTIN: Well, yes. . . I would like to deal with that and we said here in the covering letter that the original brief submitted contained certain references to Section 78 of the Labour Relations Act, and this association has been somewhat concerned as to whether the viewpoint expressed has actually been fully appreciated and understood. We would wish to make clear to members of the Committee that the association was not endorsing the suggestion that hospitals should be excluded from terms of the Labour Relations Act. Now, whether that was the impression I left with the Committee the last time. . . but this was not the intent of the words that were in our original brief in any event. But, we were pointing out that under existing legislation a very clear anomaly can exist in that certain hospitals operating under municipal auspices do have an option which is not available to those operated by community or religious interests, and as in every case the hospitals could be providing identical services serving in relatively the same locations, it hardly seems fair that legislation should not be uniform. In other words, we were making a point that here was something that was really not quite fair.

MR. MACDONALD: Have you a view as to how uniformity should

be achieved by making 78 apply to all, or by removing 78?

MR. MARTIN: Well, obviously, I think. . . we weren't able to get a full expression of opinion on this question of 78, but actually there are, in municipal hospitals that are involved in this thing, there is only one that has taken advantage of 78 up to the present time.

MR. MYERS: No hospital has?

MR. MARTIN: One.

MR. MACDONALD: In other words, can I conclude correctly that you would be in favour of removing 78?

MR. MARTIN: We feel, sir, that at least this type of legislation should either be applicable to all or none.

MR. MYERS: Can you think of any reason why 78. . . why should 78 be in there. . . can you think of any good reason?

MR. MARTIN: At the moment?

MR. MYERS: Yes. . . why should it be applicable to hospitals but not applicable to a foundry or anything else?

MR. MARTIN: I think that that is the point that we are making. Now, the other question that was left with us, Mr. Chairman, was the important one that was debated at some length earlier was this question of compulsory arbitration in relation to hospital employees, and we were left with this to report back, and we are prepared to say that we have to start off our preamble, and I share the views of Mr. Hearn that I think we all are very concerned that strike action as far as hospitals are concerned is something that we just can't see our way to this. . . but, on the other hand, we have given very careful consideration, and this has been very careful consideration as to the suggestions from your Committee that compulsory arbitration might be an alternative means of finalizing disputes should such arise in negotiations between hospitals and their employee bargaining agents. We did look at the suggestions of Professor Woods and others in this connection, and we have also examined very closely the experiences of certain groups that are already subject to compulsory arbitration procedures. Now, as a result of these examinations, our people are of the opinion that compulsory arbitration in its present legal form does not provide a satisfactory method of finalizing disputes,

and we have set out our reasons. If we have time I'll give them to you quickly.

MR. MYERS: They're here?

MR. MARTIN: They're here.

MR. MYERS: Well, you'd better tell us, because this is important.

MR. MARTIN: First of all, it's availability to either party makes it appear doubtful that prior conciliation procedures would any longer serve the useful purpose for which they were intended, in that there could be a tendency for the parties to defer their own decisions and thus, in effect, transfer this responsibility to a board. And our people felt very strongly on this. They feel that conciliation procedures that are involved in the present legislation are quite useless. They do feel that with compulsory arbitration at the end that the conciliation will merely be going through the motions and it is obvious it will be left with. . .

MR. MYERS: What would you do, then? Do away with conciliation and go straight to arbitration?

MR. MARTIN: Well, actually, we're at this point suggesting that as far as we can the present form. . . unless we can develop some other form of compulsory arbitration than what is present, at least, in those groups that are now that we would rather say. . .

MR. MACDONALD: What do you mean when you say "some other form of compulsory arbitration?"

MR. MARTIN: Well, at least, as we see compulsory arbitration now, it's a chairman and two people composed of representatives of the interested parties. Obviously what happens there is that. . . perhaps I shouldn't say obviously. . . what we feel is happening here is that two parties have a point of view and the thing is eventually settled by one person.

MR. MYERS: Well, that's all right.

MR. MARTIN: Well, that's. . . if. . .

MR. MYERS: What's the matter with that?

MR. MARTIN: Well, it's just that our people, strangely enough in this case, feel that there is more to be gained through the conciliation processes, of the people sitting down together and working it out.

MR. MYERS: Well, if these conciliation processes break down and there can't be a strike. . . where are we left?

MR. MACDONALD: It seems to me you can't have it both ways. You've got to come forward with an alternative to compulsory arbitration and not leave the thing hanging in mid-air or else you're right back where you began, that they can't strike, but there's no solution to the difficulties. . . they live with them from now to Doom's Day.

MR. MARTIN: Well, shall we. . . can we bring forward the point then. . . have there been enough difficulties that there would, of necessity, been compulsory arbitration processes.

MR. MACDONALD: We just had evidence now of the case where two conciliation boards recommending what strikes many people as being a fair proposition, that all those within the union shall make contributions to the union so they are not free riders, and yet after two conciliation boards, they just refused to consider this proposition in further negotiations.

MR. MARTIN: But we had this pointed out in only, I think, one or two instances in the total of the number of units that Mr. Hearn represents.

MR. MACDONALD: One without. . . no. . . no, eight. The voluntary deductions, I think, in all but one, and they had been able to get the compulsory deduction in all but eight. In other words, they had it with 3,600 of their 5,800 employees, but there's 2,800 of the 5,800 employees where they haven't got started. . . not a minority, as your brief said originally apparently, but a significant number nevertheless.

MR. MYERS: Well, if you can't help us on that, let's pass on to the next point.

MR. MARTIN: Yes. I think that the. . . in fairness to our people here the Section (c) I should read is this. . . The Ontario Hospital Association feels that the basis for sound collective bargaining in hospitals must rest upon the good intentions of the parties concerned without recourse to strike or to compulsory arbitration.

MR. MYERS: Oh, yes. . . but that's assuming good faith, you see, which may also be absent.

MR. MARTIN: (Quoting from Brief) It may not follow that every agreement will be satisfactory to both parties, but it is difficult to perceive how any procedure which involves compulsion would ensure a more satisfactory result. Reliance on facts, reason and appreciation of the other points of view, having always in mind the importance of providing continuous care for ill and injured people, will, in the opinion of this Association, best serve the interests of all concerned in establishing co-operative relationships between unions and hospitals in the years ahead.

MR. MYERS: Is there much difference in hospital service employees in different municipalities?

MR. MARTIN: That is between localities in the province?

MR. MYERS: Yes.

MR. MARTIN: There is some relationship, I would say, Mr. Chairman, to the general level that might pertain in that area. That is, you could take, for instance, the area around Windsor, say, would be perhaps higher than it might be around. . .

MR. MYERS: Around Windsor. . . would it be spotty, or would it be consistent?

MR. MARTIN: I would say it is fairly consistent amongst the group, in Windsor.

MR. MACDONALD: Mr. Martin, with all respect, your argument continues to base the whole issue. . . "reliance on facts, reason and appreciation of the other's point of view". . . you think is the thing we should do. Fine. Everybody agrees. But there are instances where there isn't reason, where there isn't reliance on facts, I mean, that's the whole basic approach of our society, legal and otherwise is that, fine. . . you bring in a third party and you settle it, so that if I am in disagreement with you which involves legal matters I take it to court. We get a decision and you and I have to live with it whether I win or I lose. . . whether you win or you lose.

MR. MARTIN: Well, I think that that would be ultimate of arbitration as it is now in any event, as I understand it. . . there is an arbitration procedure laid down in the Act at the moment.

MR. MACDONALD: Yes, but not with regard to collective bargain-

ing, but with regard to disputes arising out of an existing collective bargaining agreement.

MR. MYERS: You couldn't tell us. . . I'd like to hear the salaries and the wages of hospital employees. . . with the labourers. . . you couldn't give us any such comparison now. . . in different areas.

MR. MARTIN: No, not off hand I couldn't. I know the hospital side. . . I wouldn't know what the labourer. . . what level that is. . .

MR. MYERS: No, but I would like to know whether it is spotty or not.

MR. MARTIN: I don't quite get the question, Mr. Chairman.

MR. MYERS: I mean. . . is the wages which are paid to hospital employees show capriciousness in the attitudes of the different boards . . . is there a wide variation in what a cleaner would get in a hospital in Galt, and one in Windsor, and one in Kingston?

MR. MARTIN: As a general observation I would say that there are variations, but they aren't great. We could lay before you the whole scale of salaries that might be going across the province and you'd find variations, but you wouldn't. . . you would find common patterns that exist.

MR. MYERS: I see. Thank you very much, sir. We shall consider the matters in your brief in due course.

THE BRICKLAYERS' AND MASONS' UNION OF HAMILTON, ONT.

MR. MYERS: Would the Bricklayers and Masons come forward, please.

MR. PERKINS: Mr. Chairman, this is the representatives of the Bricklayers' and Masons' Union No. 1 of Hamilton, represented by Mr. Alfred Davidson, Mr. Robert Bradshaw and Mr. William McDowell.

MR. MYERS: Might I say before we start that it is now twenty minutes to twelve or thereabouts, and we must conclude our hearing for today at one o'clock because this room is to be used for something else. So, will you make it as fast as you can? Are you giving us briefs?

MR. DAVIDSON: The Secretary has the Briefs.

MR. MYERS: He has only a few?

MR. DAVIDSON: Lots. Hundreds of them.

MR. MYERS: We will never get through this today, you know.

MR. McDOWELL: Well, most of that, Mr. Chairman, are evidence rather than part of the brief.

MR. MYERS: Would you. . . now, I'm willing to do whatever you like. . . if you want to come back again that would be all right, or if you want to gallop through this as fast as you can, why all right, too.

MR. BRADSHAW: Well, Mr. Chairman, we would like to take the first part, if we can. It only goes to page 5.

MR. MYERS: It might even speed up matters if you you'd tell us what the pages say without reading them.

MR. McDOWELL: There are only ten pages, Mr. Chairman. The other is some . . .

MR. MYERS: I think perhaps that in all probability it would be best if you read it through first.

MR. BRADSHAW: "This brief is presented by the. . .

(MR. BRADSHAW READS BRIEF TO END OF PAGE 3):

". . . That is all that is meant by Union Security."

MR. MYERS: Could you tell us. . . what is the difference in pay between the unorganized bricklayer and the union man in the Hamilton area?

MR. BRADSHAW: I would like to refer that to our business agent, Mr. McDowell.

MR. McDOWELL: Mr. Chairman, at the present time our rate is \$2.70 an hour, and I would say that there's quite a few of these would work anywhere from \$1.00 up to maybe \$2.25.

(MR. BRADSHAW RESUMES READING BRIEF)

" . . . than those guaranteed by a minimum wage law."

MR. MYERS: Does that mean that the non-union bricklayers lay more bricks than a union bricklayer?

MR. BRADSHAW: You can't go much by that. . . it is not a case of laying more bricks. . . it's a case of them working for \$100.00 per week at a rate that is less than half of ours. . . that way they are making a living, but they are certainly ruining business.

MR. DAVIDSON: In other words, these emigrants that are coming in from other countries and taking these jobs at any rate they can get and they put the good union bricklayer out of a job.

MR. BRADSHAW: Even though they are working sometimes for half the rate, we are still managing to compete in some instances, but, of course, as we compete more then they are going to cut their wages more, and when we say it is a "rat race" we mean that all safety considerations are almost ignored and the chances they're taking with life and limb is something terrific.

MR. MACDONALD: Certainly, in the long run health considerations are taken into account, too.

MR. BRADSHAW: Well, we've never objected to working hard. Competition, as we stated, is on every job. . . I mean, if you are not working the fastest you're the first one to go. . . and that's life.

MR. MYERS: Tell me. . . do bricklayers lay the same number of bricks. . . approximately. . . one bricklayer as another?

MR. BRADSHAW: Well, I would say. . . I wouldn't say that

any two bricklayers would lay exactly the same.

MR. MYERS: Do the unions put any restrictions upon a man laying as many bricks as he is able to lay?

MR. BRADSHAW: Well, I'd like. . . the secretary has an article which deals with this very subject. This is a pamphlet that is put out by the International Bricklayers' Union and this section deals with it. . . "Contrary to the myth, there is no minimum other than that demanded by human limitations, the number of bricks that a bricklayer may lay in a given day. In fact, the Bricklayers, Plasterers and Masons International Union of America has a standing offer of \$1,000 to any one who can show proof of such a policy on the part of any subordinate union local. . . "

MR. MYERS: And that applies to the. . . all of Ontario?

MR. BRADSHAW: To all of them. . . any given area.

MR. MACAULAY: Let me ask you this. . . is there, apart from the question of there being any policy. . . what is the facts on the long range tend to point out as the. . . what is the average number of bricks the average bricklayer in your union lays in a period of a day?

MR. BRADSHAW: Well, having acted in a supervisory capacity I would say that it is an almost impossible thing to answer because each type and nature of a building is a factor in how much work. . . I might say that in usual factory construction would be probably the easiest place to get a run. . . the bricks layed would be approximately 800 bricks per day. . . they are all face brick. . . On a commercial building we run face brick backed up with material. . . it would run approximately 400-500 bricks backed up in a day.

MR. MYERS: Has the union ever told a man not to lay so many bricks?

MR. BRADSHAW: Well, I have been connected with the union I'd say all my life, my working life anyhow. . . my father and grandfather belonged before me. . . and at no time have I ever heard such a statement by the union.

MR. WARDROPE: There's so much difference between jobs. . . where they've got to cut bricks in two and they've got to lay them around the windows, and so on. . . there would be no comparison between the number of bricks they lay there and what they would lay in a trade wall. It is very hard

to get any minimum and maximum.

MR. BRADSHAW: Yes. Probably a house would be a better thing. . . on the side of a house you have to lay at least 500 brick a day, and they are all face brick. . . at least, or you wouldn't be there, that's all there is to it. We don't set the number. . . I think the employer is the one who sets the number. If he's not making money, you're not going to be working there.

MR. WARDROPE: He watches your work. He knows whether you can lay brick or not.

MR. MYERS: Does he set standards?

MR. BRADSHAW: Well, standards. . . well, do you mean quality of brick?

MR. MYERS: Supposing an employer says -- this fellow doesn't lay enough bricks, I'm going to fire him -- ?

MR. BRADSHAW: That's all there is to it.

MR. DAVIDSON: Down the road.

MR. BRADSHAW: We have never tried to restrict this because we feel it is necessary if we are going to keep the trade up.

MR. MACAULAY: Now, there's never any problem arises of secondary boycott under a discharge of that nature?

MR. BRADSHAW: Secondary. . . a discharge of that nature? Not to my knowledge. I've never ever heard of anything like that.

MR. MACAULAY: That is to say if the contractor thought that the bricklaying wasn't proceeding fast enough and decided to change some of the employees who were bricklaying, you don't know of any instances in Hamilton where any of the other trades have gone off on strike or struck, or anything of that nature?

MR. BRADSHAW: Not that. . . it is hard to try and give you a picture of our industry. . . we work here today and somewhere else tomorrow. If you're fired here, that's fine, you go somewhere else. . . or if you want to quit you go somewhere else. There is no thought of trying to maintain a job in one place because it is going to be ended sooner or later anyhow. It is not a permanent proposition.

MR. MACAULAY: That's true of a lot of this labour skill. . . that's true of a lot of the construction industry. . . I don't think it is any more

indigenous to yours than others. That's true of plumbers, heating contractors, roof shinglers and so many things. . . I don't think you're any different in that extent, but I was just wondering. . . I am not saying there is. . . I was just interested to know whether you've ever known of cases of secondary boycott or where other trades have gone out on strike in Hamilton where there was a change over of the labour force with the bricklayers due to their. . .

MR. BRADSHAW: As a matter of fact, I don't believe there's been a strike in the City of Hamilton in bricklaying I'm sure. . . I don't think any of the other trades since 1922, I believe.

MR. MACAULAY: Well, is your basic complaint, if I may find out. . . is your basic complaint boiled down to this. . . that one. . . some government is letting people into this country who go into the bricklaying business, and secondly, those who do go into the bricklaying business are prepared to go into it and receive for their wages too little, and that you want an increase in the minimum wage for bricklayers?

MR. BRADSHAW: Well, I think if you'd let us finish this you'd get a better idea of what we're driving at.

MR. DAVIDSON: That is dealt with on the next page, isn't it?

MR. BRADSHAW: Yes, I believe so.

(MR. BRADSHAW RESUMES READING BRIEF TO PAGE 6)

" . . . the bargaining area of the craft. "

MR. MACDONALD: Mr. Chairman, these recommendations don't provide any specific suggestions for legislative changes that would meet your basic problem of a large influx of unorganized workers. . . now, have you any specific suggestions there?

MR. BRADSHAW: I must say that is about as specific as we can get, the idea that we feel that our workers are on a geographical basis that when we negotiate with a group of employers as we have been doing for a good many years, that that agreement covered this whole geographical area whether the people are parties to the agreement originally or not. . . in other words, make every employer a party to the agreement that has been negotiated by the representatives of the workers and representatives of employers.

MR. MACDONALD: In other words, this would be the equivalent

of what is known, I think, in the textile industry as sort of a . . .

MR. BRADSHAW: You mean, sorts of a standards act, somewhat. . .

MR. MACDONALD: . . . council. Am I not correct. . . in that situation, Mr. Metzler, does it apply to everybody that's in or do they all go in anyway?

MR. METZLER: Are you referring to the Industrial Standards Act?

MR. MACDONALD: Well, frankly, I don't know what the correct term is. . . in the textile industry there's sort of a council of employers who . . .

MR. METZLER: The clothing industry. . .

MR. MACDONALD: . . . or clothing industry.

MR. METZLER: Well, they have in the City of Toronto, what they call the Joint Board and it consists of representatives of the various unions that function in the industry. They bargain with the employers as a group. Now, their bargaining is for specific rates and conditions to be included in a collective agreement covering pretty well the industry and maybe that agreement is with individual employers, but beyond that they also have a schedule under what is known as the Industrial Standards Act and every so often the employers and the unions will call for a conference, and that conference is representative of the two groups. . . that may also be representative of employees who are not within the organizations. They then set up minimum conditions, basic conditions for what they call the Zones. In the case of the clothing industry the zone has been established by the Minister of Labour for the entire province of Ontario, so that the clothing industry knows that minimum basic conditions will be maintained in Ontario. Now the control is established through an advisory committee and it consists of likely five people under an impartial chairman. Because the clothing industry has been declared interprovincially competitive they raise a fund by taxation on their own pay rolls which goes into the hands of the advisory committee and they have their own inspectors who check the records of the employers to make sure that the minimum basic conditions are being maintained.

MR. MYERS: Supposing the clothing manufacturer doesn't subscribe, there wouldn't be any way of compelling him to.

MR. METZLER: He subscribes. It covers the entire industry but it doesn't represent the approach to final bargaining.

MR. MACDONALD: Well, would this kind of thing suit your industry?

MR. BRADSHAW: Well, I think if you were to look at it from this viewpoint that if I'm working in a plant and I become part of a bargaining unit in this plant. . . I mean, that's pretty stable employment and my area of employment is covered. . . well, working in the construction industry without some means of covering a whole geographical area, then the only time I am going to be covered is when I am working for those individuals who are parties to the agreement.

MR. MACDONALD: No. . . but, my question is. . . would some adaptation of this kind of thing that you've got in the clothing industry is what you are after on a regional basis, not necessarily on the individual basis.

MR. BRADSHAW: Yes, on the regional basis. . . something of that nature, yes. Of course, we, not being lawyers, just working men, we don't feel qualified to suggest legislation, but we would like to try and point out our problems.

MR. MYERS: There is another group of the building trades that suggested that they should be exempted from the Act and that they could carry on a strike if they liked. What do you think of that?

MR. BRADSHAW: Well, this would be my own personal opinion of this. . . personally I have found in my experience that since the time of the Act, I've practically lived under the Act. . . but, one time when we had trouble. . . negotiated with the employer and we couldn't find a satisfactory answer, or if there was a non-union employer we would place a picket around his building and usually wind up with unsatisfactory agreements. . . today if there's a non-union job going on and we attempt to put a picket around it the first thing we know we're hauled into court, there's injunction this and injunction that and all we can see of the present Act, from a personal viewpoint, is that all the restrictions seem to hold us down and we see nothing that

protects or gives us any more than we had previous to this.

MR. MACDONALD: In other words your situation sort of makes it advisable for you not to get certified and that way stay out from under the Act?

MR. BRADSHAW: That's what we have felt. . . as I say, if we attempt to organize by our normal method of picketing and making the public aware of the fact that it's non-union, then we are restricted from doing this. If there is to be legislation, we would like to see some protection and the guarantee . . . we are going to abide by. . . but we'd like to see some protection of our wages and working conditions.

MR. MYERS: Mr. Metzler, could you tell me under what authority an employer in the clothing industry in Toronto who is not a member of any association can be compelled to pay specific wages to workers who are not members of the union?

MR. METZLER: We have, Mr. Myers, in this Province a statute known as the Industrial Standards Act. It is possible for the Minister to define an industry and also to set up a zone for the operation of the industry, permit a conference to be called which is widely advertised, and everybody is eligible to attend that conference who is affected and express his position. So that in the final analysis if a schedule is drawn and is accepted and approved, then he has had his opportunity to have a say and he is bound by the schedule.

MR. MYERS: There isn't any reason why that couldn't be applied to the building trades, or is there?

MR. METZLER: Oh, it does apply. . . you must, of course, take into account one of the statements that has been made, and that is that every local union in the construction industry has a geographical limitation to its operation. For instance, these gentlemen would be the first to tell you that they have no jurisdiction in the City of Toronto because that is covered by a different local of their international organization.

MR. MYERS: Would the Minister set the Hamilton area as a zone in which minimum pay for. . .

MR. METZLER: Yes, he could define the zone.

MR. MARTIN: Might I say something on this. . . I must

say that this has been done, to my understanding, with the bricklayers in Ottawa under this present Industrial Standards Act. . . they found that the one great drawback to it was the impossibility to enforce it. You see, any prosecutions, it is my understanding and I might be wrong, is that the local must pay the cost of prosecution. . . the government does not step in and enforce this, and they found in many cases the expense was ten to twenty times as much money as the chap is fined for violating this Industrial Standards Act . . . it would break the small local if we had to enforce this.

MR. WARDROPE: Tell me this. . . supposing that there's a building being built we'll say in the City of Port Arthur. . . a Hamilton contractor gets that job. . . can he bring his bricklayers up from Hamilton and pay them whatever rate he likes regardless of our main office. . .

MR. BRADSHAW: No. . . I must say he would be going into the area that is covered under another local union. I'm not sure about Port Arthur and Fort William, but I think they have a local there now of the bricklayers. . . that rate would be the governing one . . . if it was less than the one we obtain in Hamilton it would be up to the man or not whether he wanted to go. . . but that rate would be governed and at least their conditions would hold on that job rather than the Hamilton.

MR. WARDROPE: Well, I noticed on Page 3 in section 4 you mention these emigrants coming in and working from dawn to dusk seven days a week for some employers. You're powerless to do anything about that, eh?

MR. BRADSHAW: Absolutely powerless. I mean, we've attempted to organize them and they present the language difficulty to begin with and. . .

MR. WARDROPE: Even though your union men are the workers?

MR. BRADSHAW: Well, they are not working on the same project. That's another thing. . . the project might be a house or a group of houses. . . these things don't last a great length of time, and years ago when we could take it and do something right immediately we might get somewhere, but to go through all this process of certification, by that time the project is done. . . those men are gone. . . they are looking for a dollar wherever they can get it. That's the great difficulty at the present time trying to organize

under the certification procedure.

MR. MACDONALD: The ramifications of this, Mr. Chairman, go beyond the jurisdiction of this Committee in that they have social implications that I think are appalling. . . people are willing to come in (a) because they are interested, they have lived under a very low wage. . . they come in and maybe six of them will live in the same house and by that means they are able to survive because they are only getting a dollar an hour or something of that nature; in effect, the payment in the industry perpetuates a condition which creates bad social conditions which is conducive to the development of slums . . . why you could go on in your social problems with a list as long as your arm.

MR. ROWNTREE: How do your proposals stand with respect to the position of your counterparts in, say, the Toronto area?

MR. BRADSHAW: I couldn't answer that. I have no idea.

MR. ROWNTREE: Have you attempted to discuss it with your counterparts in this area?

MR. BRADSHAW: I must say that coming on the agenda of the Provincial Council of Bricklayers presenting a brief. . . that is supposed to be a province-wide viewpoint on the. . .

MR. ROWNTREE: Do you endorse that?

MR. BRADSHAW: Well, unfortunately, I have yet to see it. It's probably American.

MR. ROWNTREE: Have you taken any steps to establish a common ground between your position and those in Toronto?

MR. BRADSHAW: I think in all honesty this is definitely our own local's viewpoint. We haven't discussed it with any other groups.

MR. MYERS: Do bricklayers work all the year round or are they prevented from working in the extreme cold weather?

MR. BRADSHAW: Well, that is again a yes and no answer. . . in some instances you may work a whole year round if you are fortunate enough to be working some place where you are protected from the weather. In other cases you may only work eight or nine months. . . nine months is a pretty good average for us to work.

MR. MYERS: If a bricklayer were not working in the winter could he work at some other trade. . . could he belong to another union?

MR. BRADSHAW: I have never heard of instances of this fact. I know of one chap who drove a taxi during the winter, just as sort of another occupation. . .

MR. MACDONALD: In respect of the problem of eating twelve months of the year.

MR. BRADSHAW: Very much so. That's what I mean. . . he could be a moonlighter. . .

MR. MACDONALD: He could be a moonlighter. . .

MR. BRADSHAW: If they could get moonlight now. . . they work from dawn till dusk. . . they'll be putting lights out next.

MR. WARDROPE: Well, it's a big problem.

MR. DAVIDSON: May I say something. . . I can't understand why this is within the jurisdiction of this committee. . . now, an industrial plant. . . that may be scattered all over the place. . . it is not necessarily located in a particular lot or anything like that. . . Now, if I go to work in an industrial plant and I don't wish to become a member of the union, in some I don't have to become a member of the union. . . however, I do have agree to their standard of wages. . . I receive their standard of wages automatically. I also work under the conditions of work as established in that plant. In other words some are bargaining for others, a representative group are bargaining for those who don't wish to be represented. Now, we have the same conditions . . . precisely the same conditions as exist in a plant except that instead of one employer we have one hundred employers and our natural area of jurisdiction is geographical. . . therefore I believe the same conditions exist in an area as it does in an employer unit or in a plant unit. . . at the present time the Act only covers employers or plant divisions. . . that is where the plant can be divided into three or four different unions. However, I can see no difference between a plant and an area, so. . .

MR. MYERS: I think you've made your point quite clear, Mr. Davidson. Will you go on? Unless there is more discussion about the . . .

(RESUMES READING OF BRIEF)

MR. BRADSHAW: Mr. Chairman, and members of this Committee, we would like to say that legislation is no substitute for conversation, and the problems of management and labour can be best worked out if the words between us far outnumber the words written for us. We are pleased Mr. Chairman and Members, to have had this opportunity.

MR. ROWNTREE: Mr. Chairman, would this be an appropriate time to ask Mr. Metzler if he would comment on the broad situation? Would you care to, Mr. Metzler?

MR. METZLER: I would like to say, Mr. Chairman, that I find myself in a bit of a difficulty. . . if you want me to comment on the question of this arbitration award I would like to say that correspondence has passed between the Minister and Mr. Davidson, between myself and Mr. Davidson. . . I point out that this issue had been raised in a brief before the Select Committee. It was my feeling that the unions should avail themselves of the opportunity to come before the Committee and lay their positions before it so that there would be no misapprehensions. This is the forum where it became a matter of public record and I felt that the proper thing for them to do was to put their position on record along with what already had been stated. And that is the general comment that I would make on that. On the question of the construction industry generally. . . it's a very difficult situation. It's obvious that you cannot tailor a piece of legislation to meet every given situation. I think that Professor Finkelman in his approach to this matter has given you statistical information on the number of times that various construction trades have been before the Ontario Labour Relations Board, and I think that he has pointed out to you that, in particular, the carpenters' union have availed themselves very often of the processes of the Board. I think he has made it clear to you that the Board uses every possible means at their disposal to work the cases through in the construction industry as quickly as possible. They realize that time is of the essence because of the fact that many of the jobs are not long term in their operations. They also are alive to the fact that certain factors will vary under which certification will take place. The commonest form, I think, is certification on a project basis, then you have a contractor building, say, a bridge or an overpass, and he has certain people employed. . .

well, if that is the only job that he has in the area, likely it will be a project or a job certification. But if there has been a history of his being active in the particular area then the certification may go in what is known as an area basis and the negotiation of the collective agreement and the renegotiation of the collective agreements will be on that area basis.

I can say to you that it is obvious that there certain special considerations with respect of the construction industry. . . the peculiar nature of the employment. The big problem that is posed, of course, is that you have labour relations legislation that is designed as far as practicable to meet the needs of labour and management within the jurisdiction of the Province of Ontario. The problem, I suppose, that could best be posed to the Committee is this. . . Can you have effective legislation if it does not apply with equal force and validity to all persons who operate in the field of labour relations? That is, I think, the major problem.

MR. ROWNTREE: Professor Logan, would you want to make a comment?

PROF. LOGAN: Mr. Chairman, I noticed these two unions involved in this dispute are both members of the American Federation of Labour - C. I. O.

MR. ROWNTREE: Are they both members of the Canadian Labour Congress?

PROF. LOGAN: Both members of the Canadian Labour Congress. . . Why did not the bricklayers use the grievance procedure which is offered to them in their constitution to take this matter before the National Joint Board in Washington?

MR. DAVIDSON: Might I answer that? In our first letter to the company we ended up the letter by saying. . . "if you could postpone your contemplated action, we are more than willing to re-submit this dispute to the Joint Jurisdictional Board in Washington, D. C., for confirmation of our claim or to abide by its decision." Why they didn't see fit to make use of this, I can't answer.

MR. ROWNTREE: Well, Mr. Davidson, this is touching on a rather important phase of this whole enquiry as something this Committee is

very much interested in. Now, as I understand it, there was your union and the Ceramic workers' union involved. . . is that right?

MR. DAVIDSON: No, sir. We were not involved in a dispute at all.

MR. ROWNTREE: But, there was a conflict of interests, was there not?

MR. DAVIDSON: Only to the extent that the ceramic workers found a clause in their agreement by which they thought they would get the bricklayers out of the plant and have their own members do the work.

MR. ROWNTREE: That's what I mean. There was a conflict between the two unions. Now, it appears obvious that there is this procedure available in Washington known as the Joint Board. . . now, there is no such procedure in our Canadian labour set up. Have you taken any steps through the Canadian Labour Congress to have a similar body established within the Canadian labour union movement to deal with such matters as this right here in our own country?

MR. DAVIDSON: Well, your question is superfluous, it's not what we're trying to get across. . .

MR. ROWNTREE: Well, will you answer my question. . . have you ever. . . you've referred to the letter which that you've written to the company. . . did you ever take it up with the president of the Canadian Labour Congress?

MR. BRADSHAW: No, sir. I might answer that by saying that right now we are in the process in the City of Hamilton of setting up a local jurisdictional board to try and settle, particularly in the building trades, any grievances we might have. I might add that there has been nothing concrete done as of yet. . .

MR. ROWNTREE: But, if that were established, then, would that help solve the situation?

MR. BRADSHAW: Yeh, but what we're not concerned with is. . . we are quite willing to abide by the decision of the arbitration board as far as the decision is concerned. . . we are not going to argue that point, but we do object to being called black hands very strongly and labourous thieves. . .

imagine yourselves in the same position. . . take up the newspaper and somebody's calling you blackmailer and thief. . . what recourse have we?

MR. ROWNTREE: Well, I don't think this Committee can control the words and language even if it's regrettable.

MR. BRADSHAW: Well, secondly, if we come along and exhibit in a brief asking that the legislation contains something that we feel that we can prove is completely wrong. . . we have no other recourse but just come here and try and prove. . .

MR. MACDONALD: Well, Mr. Chairman, may I ask Mr. Metzler this question. . . When an arbitration board sits on a case which involves the concept of jurisdiction between two unions, is it not a normal procedure to seek representations from both the unions involved?

MR. METZLER: The answer to that, Mr. MacDonald, is that . . . may I preface it by making a remark that will lead up to an answer to your question? It arises out of what Professor Logan has said and the reply . . . I doubt very much whether even a submission to the Joint Board in Washington would be the complete answer to this particular problem. The reason I say that is because of the fact that you might bind the bricklayers and also the Canadian Porcelain Company insofar as they might be considered their contractors, and they might accept the result if the two of them agreed to it, but you must remember that the ceramic workers are not members or associated with the particular committee in Washington. . . they are an industrial union. . . they are not a construction union. . . this is not a dispute, as it were, between two competing organizations such as the bricklayers and the carpenters for a particular aspect of jurisdiction. . . so you might tie up two parties just as in the case of an arbitration board. You can tie up the ceramic workers and the Canadian Porcelain Company, but the bricklayers are not privy to that contract and they have no jurisdiction before the board of arbitration. They had no right to be represented or to be heard there because they're not. . .

MR. BRADSHAW: Well, doesn't it follow, Mr. Chairman, that they should not mentioned our names in the report, in the award, and let it go at that? Without castigating us, calling us everything under the sun.

MR. MYERS: I don't think anybody should have called you those names without giving you an opportunity to be heard. I think that is pretty fundamental.

MR. WREN: Well, why weren't you represented at the hearing?

MR. BRADSHAW: We never even knew about it until we read it in the paper. We weren't even aware of the fact that an arbitration board was sitting.

MR. METZLER: May I ask one of the members of the union committee, because I don't want to leave any wrong impression in the minds of any members of the Committee. . . are the ceramic workers considered a construction union?

MR. BRADSHAW: No.

MR. METZLER: They're an industrial union?

MR. BRADSHAW: That's true, yes.

MR. MACDONALD: I have a problem that revolves around this considered point. . . that if you are going to use language like that, you should have had an opportunity to present your case. . .

MR. BRADSHAW: And, furthermore, when the other association is going to use this particular brief, or arbitration report in a brief asking for legislation. . .

MR. MYERS: What was the issue at arbitration?

MR. BRADSHAW: Whether or not. . . well, they have a clause, it is my understanding, that apparently since they've become organized. . . we've had men working in the Porcelain plant before there was an industrial union in there and doing that type of work, but since they've been organized and negotiated a contract apparently they have put a clause in it that allows them to do general maintenance in the plant, or at least they claim that it is part of their contract. We were completely unaware of this because we were doing just what we would normally be doing. . . we've gone in there every time they have needed men to do some work, we've worked on the job. . .

MR. MYERS: Well, what was the issue?

MR. BRADSHAW: Repair and building kiln cars.

MR. MACDONALD: The repair on these cars.

MR. MYERS: Whether it was the bricklayers that work on kiln cars. . . or. . .

MR. BRADSHAW: . . . Ceramics. . .

MR. DAVIDSON: . . . or the maintenance of the company.

MR. MACDONALD: Well, are we not right that the bricklayers had been repairing them up until now?

MR. BRADSHAW: Yes. We had been doing this for years. What actually occurred in this plant is that they had. . . who did the necessary repairs. . . the minor ones. . . and then they'd stock up the cars that needed rebuilding and when they got enough of them they would either employ a man directly or get this Humphreys Company who come in and do the rebuilding. Well, this is something we've been doing for years, and when this came about as the correspondence will show, we tried to come to some amicable agreement and thought we had arrived at it, that this same procedure would carry on, they'd do the minor repairs and when they'd built up enough cars that had to be rebuilt we would go in and do them. The next thing we know there's an arbitration report calling us blackmailers.

MR. MORNINGSTAR: Well, as I see it, it was written in their contract. . . you say. . . for them to do this. . . negotiated in that.

MR. WARDROPE: Who was the author of the. . . the report. . . who used the language which you objected to?

MR. BRADSHAW: Judge Lang and William England and the representative of the company, Mr. Pyle. We assumed that as chairman he was responsible for the language.

MR. MACDONALD: Well, whatever comfort it would give our witnesses. . . this isn't a unique problem. . . we have had it, for example, in the instance of maintenance or cleaners who are involved in contracts and suddenly they are dropped and the company sublets or lets out the contract for cleaning the. . .

MR. BRADSHAW: Well, we're not objecting too much to the award given Judge Lang. . . we are objecting to the fact that he is saying something that we are not and giving a wrong impression, particularly in the

brief submitted by the Ontario. . . .

MR. MYERS: You have been found guilty without being given an opportunity of being heard, that's the. . .

MR. MACDONALD: Well, I think the answer. . . at least you can be assured that we won't take too much cognizance of that position of the construction committee brief.

MR. BRADSHAW: What we had thought of asking for was that if you were going to use this at all that at first you would hold an investigation into the matter completely and not use the particular item at all.

MR. ROWNTREE: I don't want to prolong this unduly, Mr. Chairman, but it seems to me that here we have an opportunity where you have this conflict of interest for the Canadian Labour Congress to move right in with a committee and set up. . . formulate some proposals for the. . .

MR. MYERS: Well, there isn't any conflict. . . they say they were wrong.

MR. DAVIDSON: That is not quite right. . . there is not, in so many words, a conflict. . . what is involved is a clause in a collective agreement that has put us out of the plant, so to speak. Now, I think that I might point out that if this Committee ever thought of recommending that a tribunal be set up to resolve jurisdictional disputes, they would first have to decide which takes precedence, a clause in a collective agreement or the work which belongs to a certain union.

MR. BRADSHAW: Actually, by tradition brick and mortar are bricklayers' work, let's face it.

MR. MACDONALD: Well part of the problem to set up such a committee to examine conflicts in jurisdiction would be that conceivably there may come a time when they would have to re-examine the continuing validity of the previous jurisdiction and say that events have moved on to the point that this is out of date. . . I think that's part and parcel if ever such a body is set up.

MR. BRADSHAW: I might add for what it's worth that the international headquarters of all of the unions, industrial and construction, are working on this very problem and have put out, I believe, a ten-point

thing covering the relationship between industrial plants and outside workers, and are more or less trying to bring this down to a local level now and work out some agreement amongst ourselves rather than have anymore of this sort of thing and without putting the government in the position of arbitrarily settling a dispute which they aren't too completely aware of anyhow no matter who you appoint as chairman.

MR. ROWNTREE: It seems odd that that report was unanimous, bearing in mind the membership on it.

MR. BRADSHAW: Well, it was to everybody's advantage except ours, and we weren't there, so it's bound to be unanimous.

MR. DAVIDSON: Could I refer back just one more. . . this is the last opportunity that we'll ever have to appear before this Committee, and in part of our previous. . . the first part of our Brief there is a condition which exists which, in the construction industry. . . well. . . it's not very good for us. . . and that is, providing that we went on to any particular job . . . even if it remains employer or any other basis. . . if we go to an employer and get certified, the people working on that job, as the bargaining union, that employer can, at any given moment, completely get rid of the certification. . . the certified union. . . the certified bargaining unit, and he does this simply. . . if he is employing, say, eight bricklayers. . . and we get those bricklayers certified. . . now, if he resists this, all he does is sub-contract the work. . . in other words, the minute he sub-contracts the work there is another employer involved, again all our certification has gone for naught.

MR. MACDONALD: We had this representation from the unions involved in the mining industry where the company would sub-let it to somebody else and, in effect, get rid of their contract. . . I think this is a point we'll have to consider. . . whether when you sub-let a job. . . when a company that is bound by collective agreement sub-lets a job doing a porportion of the work as to whether he has a continuing obligation.

MR. BRADSHAW: Well, that's why we'd sooner see this on a geographical location because we feel this would cover this. . . once you gave us a jurisdictional area. . . a geographical area, then we would be more

or less in control of this. . . the agreement we'd come to with our employers would cover this certain area. . . the same as you would in a plant. . . the plants employ far more men than there are in the construction industry, and they have an overall agreement, and we feel that due to the fact that we must move from place to place in this geographical area why shouldn't we be covered.

MR. MYERS: You can't think of any other solution, can you than that?

MR. BRADSHAW: None. . . none, I can honestly say.

MR. DAVIDSON: There is only one other solution, the Industrial Standards Act to be made available to unions on request without necessarily having their employers part of the people in question.

MR. MYERS: Well, is there any more business before the Committee, Mr. Secretary?

MR. PERKINS: Tomorrow morning we meet at ten thirty to consider briefs from the Hydro Engineers, the Professional Engineers and from Mr. Miller Stewart on Conciliation, and we also have a brief from the Labour Progressive Party, so we'll have a busy day tomorrow.

MR. BRADSHAW: Mr. Chairman, I would like to say thank you for this opportunity.

MR. MYERS: Let us thank you for the trouble that you went to and the able way in which you presented your Brief.

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